

*Washington (state) Laws, statutes, & Compilations*

# PIERCE'S CODE<sup>cf</sup>

## STATE OF WASHINGTON

**PUBLISHED BY AUTHORITY**  
**Certified by the Secretary of State**

**CYCLOPEDIA ARRANGEMENT**  
**INCLUDING LAWS 1921**

### **ANNOTATED**

Citing 115 Wash.; 267 Fed. and 253 U. S. Reports

By

**Frank Pierce**

Pierce's United States Statutes; Pierce's Washington Code  
1901, 1905, 1912, 1919

**VOLUME II.**  
**CONSTITUTIONS**  
**PROCEDURE**  
**GENERAL INDEX**

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**SEATTLE**  
**NATIONAL LAW BOOK COMPANY**  
1921

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# AUTHENTICATION

**AN ACT to provide for the approval of the manner of compilation and publication, and for the certification of a compilation of the laws of the State of Washington.**  
Approved March 1, 1917. L. '17, p.107.

**Committee to Approve Plan, Etc.** §1. That a joint committee consisting of three members of the Senate and three members of the House be appointed by the presiding officers thereof, with powers and duties as follows:

Said committee shall have authority to prescribe or approve an editorial plan of a complete annotated compilation of the laws in force in the State of Washington, including the laws of 1919, to be made and published by Mr. Frank Pierce; said committee shall prescribe or approve the manner and kind of mechanical execution of said compilation, including also kind and style of binding, paper, type and general make-up of the compilation.

The said committee shall undertake said work as soon as practicable and upon its acceptance by said publisher, said plan and acceptance shall be filed with the secretary of state.

After the filing of said acceptance with the secretary of state, the secretary of state is hereby authorized and directed to compare the laws in said compilation with the original rolls and when completed certify the same without fee as session laws are certified which certificate shall be published in said compilation. L '19 ch 104.

**Code as Evidence.** §2. Said code when so certified shall be received as evidence of the laws published therein, to the same effect as session laws are received in evidence. L '19 ch 104.

**Inclusion of Law 1919.** §3. This act is a continuation of said Chapter 34, Session Laws of 1917, and the work heretofore done on said code is to be continued to include the Session Laws of 1919. L '19 ch 104.

## APPROVAL OF COMMITTEE

We, the Joint Committee appointed by authority of Chapter 34, Laws of Washington, 1917, do hereby prescribe and approve the following editorial plan and mechanical execution of Pierce's Code 1917:

The editorial plan shall be cyclopedic, with sections numbered consecutively and each followed by the author's annotations.

In mechanical execution the code shall be set in ten point and the notes in eight point type, printed on 28 by 42 paper, 50 pounds to the ream, with the best quality black, book ink. The compilation shall be bound in the best quality law buckram.

The compilation may be bound in either one or two volumes. If bound in two volumes, Volume II shall contain the constitutions of the United States and the State of Washington, and laws for courts, full court procedure, the full criminal code and a general index of both volumes, Volume II to be approximately one-half the size of Volume I.

Volume I shall contain all the statutes not included in Volume II.

Senator E. E. BONER,  
Chairman of Joint Committee.  
Senator E. V. KUYKENDALL,  
Senator E. B. PALMER.

Representative A. E. GRAHAM,  
Representative FRED A. ADAMS,  
Representative ROBERT GRASS,  
Secretary.

## CERTIFICATE OF SECRETARY OF STATE TO EDITION OF 1921

I, J. GRANT HINKLE, hereby certify that I am the duly elected, qualified and acting Secretary of State of the State of Washington.

I further certify that I am the legal official in whose custody is placed all of the original laws passed by the various legislatures of the State of Washington.

I further certify that in relation to the laws passed by the session of 1921 that I have carefully compared the printed copy of Pierce's Code with these laws and have made corrections on the same so that the printed copy of Pierce's Code contains a correct and accurate copy of the 1921 Session Laws of the State of Washington.

IN WITNESS WHEREOF, I have hereunto attached my hand and the official seal of the State of Washington this 31st day of May, 1921.

J. GRANT HINKLE,

Secretary of State.

(Seal)

Wash  
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Volume I shall contain all the statutes not included in Volume II.

Senator E. E. BONER,  
Chairman of Joint Committee.

Senator E. V. KUYKENDALL,

Senator E. B. PALMER,

Olympia, Washington, August 20, 1917.

Representative A. E. GRAHAM,  
Representative FRED A. ADAMS,  
Representative ROBERT GRASS,  
Secretary.

## CERTIFICATE BY SECRETARY OF STATE,

I, J. Grant Hinkle, Secretary of State of the State of Washington and custodian of the seal of said State, do hereby certify that I have carefully compared the foregoing laws of the State of Washington, compiled and published as "Pierce's Washington Code", in two (2) Volumes, with the original enrolled laws, as directed by Ch. 104, Laws of 1919, and find the same to be full, true and correct copies of such original laws, with the exception of such corrections in spelling and the use of words as indicated by the use of brackets, thus [ ] as provided by law, and with the exception of all references, citations, annotations, and numbers, as are added by the publisher and contained therein.

In testimony whereof, I have hereunto set my hand and affixed hereto the seal of the State of Washington.

Done at Olympia, this 17th day of July, A. D. 1920.

(Seal)

J. GRANT HINKLE,  
Secretary of State.





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Public Officers, etc. §9047	Chattel §9746
Public Peace §9075	Conditional Sales §9767
Public Records §9085	Crimes §9771
Public Safety §9089	Mixed §9774
Rape, etc. §9107	PROBATE PROCEDURE §9776
Robbery §9116	Absentee's Estates §9776
Suicide §9117	Accounts §9786
Sunday §9122	Adoption of Children §9813
Syndicalism §9127-1	Advancement §9817
Treason §9128	Appeal §9824
Vagrancy §9131	Citations §9825
CRIMES (Prior Laws Not Repealed)	Claims §9828
§9131-1	Construction §9843
CRIMINAL PROCEDURE §9132	Descent and Distribution §9847
Accessories §9132	Drunkards §9869
Accused, Rights of, §9136	Escheats §9877
Arraignment §9151	Executors, etc. §9885
Arrest and Bail §9174	Family, Support of §9893
Construction §9193	Guardians §9897
Corporations §9199	Inventory §9921
Costs §9202	Jurisdiction §9929
Docket §9213	Letters §9933
Evidence §9214	Nonintervention Wills §9967
Former Conviction §9221	Partnerships §9970
Fugitives §9225	Sales and Mortgages §9974
Grand Jury §9232	Special Administrators §9999
Indictment §9249	Specific Performance §10005
Information §9257	Validation §10012
Indictment and Information §9266	Venue §10014
Insane §9293	Wills, Contest of §10017
Judgment §9303	Execution of §10021
Limitation of Actions §9340	Foreign §10044
New Trials §9341	Lost, etc., §10046
Recognizances §9347	Probate of §10048
Rewards §9352	

## CONSTITUTION OF THE UNITED STATES—1787.

WE THE PEOPLE of the United States, in Order to form a more perfect Union, establish Justice, insure domestic Tranquility, provide for the common defence, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity, do ordain and establish this CONSTITUTION for the United States of America. 8 F. S. A. 273.

## ARTICLE I.

SECTION 1. All legislative Powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives 8 F. S. A. 290.

In May, 1785, a committee of Congress made a report recommending an alteration in the Articles of Confederation, but no action was taken on it, and it was left to the State Legislatures to proceed in the matter. In January, 1786, the Legislature of Virginia passed a resolution providing for the appointment of five commissioners, who, or any three of them, should meet such commissioners as might be appointed in the other States of the Union, at a time and place to be agreed upon, to take into consideration the trade of the United States; to consider how far a uniform system in their commercial regulations may be necessary to their common interest and their permanent harmony; and to report to the several States such an act, relative to this great object, as, when ratified by them, will enable the United States in Congress effectually to provide for the same. The Virginia commissioners, after some correspondence, fixed the first Monday in September as the time, and the city of Annapolis as the place for the meeting, but only four other States were represented, viz: Delaware, New York, New Jersey, and Pennsylvania; the commissioners appointed by Massachusetts, New Hampshire, North Carolina, and Rhode Island failed to attend. Under the circumstances of so partial a representation, the commissioners present agreed upon a report, (drawn by Mr. Hamilton, of New York,) expressing their unanimous conviction that it might essentially tend to advance the interests of the Union if the States by which they were respectively delegated would concur, and use their endeavors to procure the concurrence of the other States, in the appointment of commissioners to meet at Philadelphia on the second Monday of May following, to take into consideration the situation of the United States; to devise such further provisions as should appear to them necessary to render the Constitution of the Federal Government adequate to the exigencies of the Union; and to report such an act for that purpose to the United States in Congress assembled as, when agreed to by them and afterwards confirmed by the Legislatures of every State, would effectually provide for the same.

Congress, on the 21st of February, 1787, adopted a resolution in favor of a convention, and the Legislatures of those States which had not already done so (with the exception of Rhode Island) promptly appointed delegates. On the 25th of May, seven States having convened, George Washington, of Virginia, was unanimously elected President, and the consideration of the proposed constitution was commenced. On the 17th of September, 1787, the Constitution as engrossed and agreed upon was signed by all the members present, except Mr. Gerry, of Massachusetts, and Messrs. Mason and Randolph, of Virginia. The president of the convention transmitted it to Congress, with a resolution stating how the proposed Federal Government should be put in operation, and an explanatory letter. Congress, on the 28th of September, 1787, directed the Constitution so framed, with the resolutions and letter concerning the same, to "be transmitted to the several Legislatures in order to be submitted to a convention of delegates chosen in each State by the people thereof, in conformity to the resolves of the convention."

On the 4th of March, 1789, the day which had been fixed for commencing the operations of Government under the new Constitution, it had been ratified by the conventions chosen in each State to consider it, as follows: Delaware, December 7, 1787; Pennsylvania, December 12, 1787; New Jersey, December 18, 1787; Georgia, January 2, 1788; Connecticut, January 9, 1788; Massachusetts, February 6, 1788; Maryland, April 28, 1788; South Carolina, May 23, 1788; New Hampshire, June 21, 1788; Virginia, June 26, 1788; and New York, July 26, 1788.

The President informed Congress, on the 28th of January, 1790, that North Carolina had ratified the Constitution November 21, 1789; and he informed Congress on the 1st of June, 1790, that Rhode Island had ratified the Constitution May 29, 1789. Vermont, in convention, ratified the Constitution January 10, 1789, and was, by an act of Congress approved February 19, 1791, "received and admitted into this Union as a new and entire member of the United States."



**SECTION 2.** The House of Representatives shall be composed of Members chosen every second Year by the People of the several States, and the Electors in each State shall have the Qualifications requisite for Electors of the most numerous Branch of the State Legislature.

No Persons shall be a Representative who shall not have attained to the Age of twenty-five Years, and been seven Years a Citizen of the United States, and who shall not, when elected, be an Inhabitant of that State in which he shall be chosen.

\*[Representatives and direct Taxes shall be apportioned among the several States which may be included within this Union, according to their respective Numbers, which shall be determined by adding to the whole Number of free Persons, including those bound to Service for a Term of Years, and excluding Indians not taxed, three fifths of all other Persons.] The actual Enumeration shall be made within three Years after the first Meeting of the Congress of the United States, and within every subsequent Term of ten Years, in such Manner as they shall by Law direct. The Number of Representatives shall not exceed one for every thirty Thousand, but each State shall have at Least one Representative; and until such enumeration shall be made, the State of New Hampshire shall be entitled to chuse three, Massachusetts eight, Rhode-Island and Providence Plantations one, Connecticut five, New-York six, New Jersey four, Pennsylvania eight, Delaware one, Maryland six, Virginia ten, North Carolina five, South Carolina five, and Georgia three.

When vacancies happen in the Representation from any State, the Executive Authority thereof shall issue Writs of Election to fill such Vacancies.

The House of Representatives shall chuse their Speaker and other Officers; and shall have the sole Power of Impeachment. 8 F.S.A. 297.

**SECTION 3.** The Senate of the United States shall be composed of two Senators from each State, chosen by the Legislature thereof, for six Years; and each Senator shall have one Vote.

Immediately after they shall be assembled in Consequence of the first Election, they shall be divided as equally as may be into three Classes. The Seats of the Senators of the first Class shall be vacated at the Expiration of the second year, of the second Class at the Expiration of the fourth Year, and of the third Class at the Expiration of the sixth Year, so that one-third may be chosen every second Year; and if Vacancies happen by Resignation, or otherwise, during the Recess of the Legislature of any State, the Executive thereof may make temporary Appointments until the next Meeting of the Legislature, which shall then fill such Vacancies.

No Person shall be a Senator who shall not have attained to the Age of thirty Years, and been nine Years a Citizen of the United States, and who shall not, when elected, be an Inhabitant of that State for which he shall be chosen.

The Vice President of the United States shall be President of the Senate, but shall have no Vote, unless they be equally divided.

The Senate shall chuse their other Officers, and also a President pro tempore, in the Absence of the Vice President, or when he shall exercise the Office of President of the United States.

The Senate shall have the sole Power to try all Impeachments. When sitting for that Purpose, they shall be on Oath or Affirmation. When the President of the United States is tried, the Chief Justice shall preside: And no Person shall be convicted without the Concurrence of two thirds of the Members present.

Judgment in Cases of Impeachment shall not extend further than to removal from Office, and disqualification to hold and enjoy any Office of honor, Trust or Profit under the United States: but the Party convicted shall nevertheless be liable and subject to Indictment, Trial, Judgment and Punishment, according to Law. 8 F. S. A. 311.

**SECTION 4.** The Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof; but the Congress may at any time by Law make or alter such Regulations, except as to the Places of chusing Senators.

The Congress shall assemble at least once in every Year, and such Meeting

\*The clause included in brackets is amended by the 14th amendment, 2d section,

shall be on the first Monday in December, unless they shall by Law appoint a different Day. 8 F. S. A. 317.

**SECTION 5.** Each House shall be the Judge of the Elections, Returns and Qualifications of its own Members, and a Majority of each shall constitute a Quorum to do Business; but a smaller Number may adjourn from day to day, and may be authorized to compel the Attendance of absent Members, in such Manner, and under such Penalties as each House may provide.

Each House may determine the Rules of its Proceedings, punish its Members for disorderly Behavior, and, with the Concurrence of two thirds, expel a Member.

Each House shall keep a Journal of its Proceedings, and from time to time publish the same, excepting such Parts as may in their Judgment require Secrecy; and the Yeas and Nays of the Members of either House on any question shall, at the Desire of one fifth of those present, be entered on the Journal.

Neither House, during the Session of Congress, shall, without the Consent of the other, adjourn for more than three days, nor to any other Place than that in which the two Houses shall be sitting. 8 F. S. A. 322.

**SECTION 6.** The Senators and Representatives shall receive a Compensation for their Services, to be ascertained by Law, and paid out of the Treasury of the United States. They shall in all Cases, except Treason, Felony and Breach of the Peace, be privileged from Arrest during their Attendance at the Session of their respective Houses, and in going to and returning from the same; and for any Speech or Debate in either House, they shall not be questioned in any other Place.

No Senator or Representative shall, during the Time for which he was elected, be appointed to any civil Office under the Authority of the United States, which shall have been created, or the Emoluments whereof shall have been encreased during such time; and no Person holding any Office under the United States, shall be a Member of either House during his Continuance in Office. 8 F.S.A. 331.

**SECTION 7.** All Bills for raising Revenue shall originate in the House of Representatives; but the Senate may propose or concur with Amendments as on other Bills.

Every Bill which shall have passed the House of Representatives and the Senate, shall, before it become a Law, be presented to the President of the United States; If he approve he shall sign it, but if not he shall return it, with his Objections to that House in which it shall have originated, who shall enter the Objections at large on their Journal, and proceed to reconsider it. If after such Reconsideration two thirds of that House shall agree to pass the Bill, it shall be sent, together with the Objections, to the other House, by which it shall likewise be reconsidered, and if approved by two thirds of that House, it shall become a Law. But in all such Cases the Votes of both Houses shall be determined by Yeas and Nays, and the Names of the Persons voting for and against the Bill shall be entered on the Journal of each House respectively. If any Bill shall not be returned by the President within ten Days (Sundays excepted) after it shall have been presented to him, the Same shall be a Law, in like Manner as if he had signed it, unless the Congress by their Adjournment prevent its Return, in which Case it shall not be a Law.

Every Order, Resolution, or Vote to which the Concurrence of the Senate and House of Representatives may be necessary (except on a question of Adjournment) shall be presented to the President of the United States; and before the Same shall take Effect, shall be approved by him, or being disapproved by him, shall be repassed by two thirds of the Senate and House of Representatives, according to the Rules and Limitations prescribed in the Case of a Bill. 8 F. S. A. 337.

**SECTION 8.** The Congress shall have Power To lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common Defence and general Welfare of the United States; but all Duties, Imposts and Excises shall be uniform throughout the United States;

To borrow Money on the credit of the United States;

To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes;

To establish an uniform Rule of Naturalization, and uniform Laws on the subject of Bankruptcies throughout the United States;



To coin Money, regulate the Value thereof, and of foreign Coin, and fix the Standard of Weights and Measures;

To provide for the Punishment of counterfeiting the Securities and current Coin of the United States;

To establish Post Offices and post Roads;

To promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries;

To constitute Tribunals inferior to the supreme Court;

To define and punish Piracies and Felonies committed on the high Seas, and Offences against the Law of Nations;

To declare War, grant Letters of Marque and Reprisal, and make Rules concerning Captures on Land and Water;

To raise and support Armies, but no Appropriation of Money to that Use shall be for a longer Term than two Years;

To provide and maintain a Navy;

To make Rules for the Government and Regulation of the land and naval Forces;

To provide for calling forth the Militia to execute the Laws of the Union, suppress Insurrections and repel Invasions;

To provide for organizing, arming, and disciplining, the Militia, and for governing such Part of them as may be employed in the Service of the United States, reserving to the States respectively, the Appointment of the Officers, and the Authority of training the Militia according to the discipline prescribed by Congress;

To exercise exclusive Legislation in all Cases whatsoever, over such District (not exceeding ten Miles square) as may, by Cession of particular States, and the Acceptance of Congress, become the Seat of the Government of the United States, and to exercise like Authority over all Places purchased by the Consent of the Legislature of the State in which the Same shall be, for the Erection of Forts, Magazines, Aresnals, dock-Yards, and other needful Buildings;—And

To make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof. 8 F. S. A. 347.

SECTION 9. The Migration or Importation of such Persons as any of the States now existing shall think proper to admit, shall not be prohibited by the Congress prior to the Year one thousand eight hundred and eight, but a Tax or duty may be imposed on such Importation, not exceeding ten dollars for each Person.

The Privilege of the Writ of Habeas Corpus shall not be suspended, unless when in Cases of Rebellion or Invasion the public Safety may require it.

No Bill of Attainder or ex post facto Law shall be passed.

No Capitation, or other direct, tax shall be laid, unless in Proportion to the Census or Enumeration herein before directed to be taken.

No Tax or Duty shall be laid on Articles exported from any State.

No Preference shall be given by any Regulation of Commerce or Revenue to the Ports of one State over those of another: nor shall Vessels bound to, or from, one State, be obliged to enter, clear, or pay Duties in another.

No Money shall be drawn from the Treasury, but in Consequence of Appropriations made by Law; and a regular Statement and Account of the Receipts and Expenditures of all public Money shall be published from time to time.

No Title of Nobility shall be granted by the United States: And no Person holding any Office of Profit or Trust under them, shall, without the Consent of the Congress, accept of any present, Emolument, Office, or Title, of any kind whatever, from any King, Prince, or foreign State. 8 F. S. A. 690.

SECTION 10. No State shall enter into any Treaty, Alliance, or Confederation; grant Letters of Marque and Reprisal; coin Money; emit Bills of Credit; make any Thing but gold and silver Coin a Tender in Payment of Debts; pass any Bill of Attainder, ex post facto Law, or Law impairing the Obligation of Contracts, or grant any Title of Nobility.

No State shall, without the Consent of the Congress, lay any Imposts or

Duties on Imports or Exports, except what may be absolutely necessary for executing it's inspection Laws: and the net Produce of all Duties and Imposts, laid by any State on Imports or Exports, shall be for the Use of the Treasury of the United States; and all such Laws shall be subject to the Revision and Controul of the Congress.

No State shall, without the Consent of Congress, lay any Duty of Tonnage, keep Troops, or Ships of War in time of Peace, enter into any Agreement or Compact with another State, or with a foreign Power, or engage in War, unless actually invaded, or in such imminent Danger as will not admit of delay. 8 F. S. A. 715.

## ARTICLE II.

SECTION 1. The executive Power shall be vested in a President of the United States of America. He shall hold his Office during the Term of four Years, and, together with the Vice President, chosen for the same Term, be elected, as follows:

Each State shall appoint, in such Manner as the Legislature thereof may direct, a Number of Electors, equal to the whole Number of Senators and Representatives to which the State may be entitled in the Congress: but no Senator or Representative, or Person holding an Office of Trust or Profit under the United States, shall be appointed an Elector.

["The electors shall meet in their respective States, and vote by ballot for two persons, of whom one at least shall not be an Inhabitant of the same State with themselves. And they shall make a List of all the Persons voted for, and of the Number of Votes for each; which List they shall sign and certify, and transmit sealed to the Seat of the Government of the United States, directed to the President of the Senate. The President of the Senate shall, in the Presence of the Senate and House of Representatives, open all the Certificates, and the Votes shall then be counted. The Person having the greatest Number of Votes shall be the President, if such Number be a Majority of the whole Number of Electors appointed; and if there be more than one who have such Majority, and have an equal Number of Votes, then the House of Representatives shall immediately chuse by Ballot one of them for President; and if no Person have a Majority, then from the five highest on the List the said House shall in like Manner chuse the President. But in chusing the President, the Votes shall be taken by States, the Representation from each State having one Vote; A quorum for this Purpose shall consist of a Member or Members from two-thirds of the States, and a Majority of all the States shall be necessary to a Choice. In every Case, after the Choice of the President, the Person having the greatest Number of Votes of the Electors shall be the Vice President. But if there should remain two or more who have equal Votes, the Senate shall chuse from them by Ballot the Vice-President."]

This clause has been superseded by the twelfth amendment.

The Congress may determine the Time of chusing the Electors, and the Day on which they shall give their Votes; which Day shall be the same throughout the United States.

No Person except a natural born Citizen, or a Citizen of the United States, at the time of the Adoption of this Constitution, shall be eligible to the Office of President; neither shall any Person be eligible to that Office who shall not have attained to the Age of thirty five Years, and been fourteen Years a Resident within the United States.

In Case of the Removal of the President from Office, or of his Death, Resignation, or Inability to discharge the Powers and Duties of the said Office, the same shall devolve on the Vice President, and the Congress may by Law provide for the Case of Removal, Death, Resignation, or Inability, both of the President and Vice President, declaring what Officer shall then act as President, and such Officer shall act accordingly, until the Disability be removed, or a President shall be elected.

The President shall, at stated Times, receive for his Services, a Compensation, which shall neither be encreased nor diminished during the Period for which he shall have been elected, and he shall not receive within that Period any other Emolument from the United States, or any of them.

Before he enter on the Execution of his Office, he shall take the following Oath or Affirmation:—"I do solemnly swear (or affirm) that I will faithfully execute the Office of President of the United States, and will to the best of my Ability, preserve, protect and defend the Constitution of the United States. 9 F. S. A. 1.



**SECTION 2.** The President shall be Commander in Chief of the Army and Navy of the United States, and of the Militia of the several States, when called into the actual Service of the United States; he may require the Opinion, in writing, of the principal Officer in each of the executive Departments, upon any Subject relating to the Duties of their respective Offices, and he shall have Power to grant Reprieves and Pardons for Offences against the United States, except in Cases of Impeachment.

He shall have Power, by and with the Advice and Consent of the Senate, to make Treaties, provided two thirds of the Senators present concur; and he shall nominate, and by and with the Advice and Consent of the Senate, shall appoint Ambassadors, other public Ministers and Consuls, Judges of the supreme Court, and all other Officers of the United States, whose Appointments are not herein otherwise provided for, and which shall be established by Law: but the Congress may by Law vest the Appointment of such inferior Officers, as they think proper, in the President alone, in the Courts of Law, or in the Heads of Departments.

The President shall have Power to fill up all Vacancies that may happen during the Recess of the Senate, by granting Commissions which shall expire at the End of their next Session. 9 F. S. A. 7.

**SECTION 3.** He shall from time to time give to the Congress Information of the State of the Union, and recommend to their Consideration such Measures as he shall judge necessary and expedient; he may, on extraordinary Occasions, convene both Houses, or either of them, and in Case of Disagreement between them, with Respect to the Time of Adjournment, he may adjourn them to such Time as he shall think proper; he shall receive Ambassadors and other public Ministers; he shall take Care that the Laws be faithfully executed, and shall Commission all the Officers of the United States. 9 F. S. A. 53.

**SECTION 4.** The President, Vice President and all civil Officers of the United States, shall be removed from Office on Impeachment for, and Conviction of, Treason, Bribery, or other high Crimes and Misdemeanors. 9 F. S. A. 56.

### ARTICLE III.

**SECTION 1.** The judicial Power of the United States, shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish. The Judges, both of the supreme and inferior Courts, shall hold their Offices during good Behaviour, and shall, at stated Times, receive for their Services, a Compensation, which shall not be diminished during their Continuance in Office. 9 F. S. A. 57.

**SECTION 2.** The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority;—to all Cases affecting Ambassadors, other public Ministers and Consuls;—to all Cases of admiralty and maritime Jurisdiction;—to Controversies to which the United States shall be a Party;—to Controversies between two or more States;—between a State and Citizens of another State;—between Citizens of different States,—between Citizens of the same State claiming Lands under grants of different States, and between a State, or the Citizen thereof, and foreign States, Citizens or Subjects.

In all Cases affecting Ambassadors, other public Ministers and Consuls, and those in which a State shall be Party, the supreme Court shall have original Jurisdiction. In all the other Cases before mentioned, the supreme Court shall have appellate Jurisdiction, both as to Law and Fact, with such Exceptions, and under such Regulations as the Congress shall make.

The Trial of all Crimes, except in Cases of Impeachment, shall be by Jury; and such Trial shall be held in the State where the said Crimes shall have been committed; but when not committed within any State, the Trial shall be at such Place or Places as the Congress may by Law have directed. 9 F. S. A. 74.

**SECTION 3.** Treason against the United States, shall consist only in levying War against them, or in adhering to their Enemies, giving them Aid and Comfort. No Person shall be convicted of Treason unless on the Testimony of two Witnesses to the same overt Act, or on Confession in open Court.

The Congress shall have Power to declare the Punishment of Treason, but no Attainder of Treason shall work Corruption of Blood, or Forfeiture except during the Life of the Person attainted. 9 F. S. A. 133.

## ARTICLE IV.

SECTION 1. Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State. And the Congress may by general Laws prescribe the Manner in which such Acts, Records and Proceedings shall be proved, and the Effect thereof. 9 F. S. A. 141.

SECTION 2. The Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States.

A person charged in any State with Treason, Felony, or other Crime, who shall flee from Justice, and be found in another State, shall on Demand of the executive Authority of the State from which he fled, be delivered up to be removed to the State having Jurisdiction of the Crime.

No Person held to Service or Labour in one State, under the Laws thereof, escaping into another, shall, in Consequence of any Law or Regulation therein, be discharged from such Service or Labour, but shall be delivered up on Claim of the Party to whom such Service or Labour may be due. 9 S. F. A. 158.

Section 3. New States may be admitted by the Congress into this Union; but no new State shall be formed or erected within the Jurisdiction of any other State; nor any State be formed by the Junction of two or more States, or Parts of States, without the Consent of the Legislatures of the States concerned as well as of the Congress.

The Congress shall have Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States; and nothing in this Constitution shall be so construed as to Prejudice any Claims of the United States, or of any particular State. 9 S. F. A. 193.

SECTION 4. The United States shall guarantee to every State in this Union a Republican Form of Government and shall protect each of them against Invasion; and on Application of the Legislature, or of the Executive (when the Legislature cannot be convened) against domestic Violence. 9 F. S. A. 214.

## ARTICLE V.

The Congress, whenever two thirds of both Houses shall deem it necessary, shall propose Amendments to this Constitution, or, on the Application of the Legislatures of two thirds of the several States, shall call a Convention for proposing Amendments, which, in either Case, shall be valid to all Intents and Purposes, as Part of this Constitution, when ratified by the Legislatures of three fourths of the several States, or by Conventions in three fourths thereof, as the one or the other Mode of Ratification may be proposed by the Congress; Provided that no Amendment which may be made prior to the Year One thousand eight hundred and eight shall in any Manner affect the first and fourth Clauses in the Ninth Section of the first Article; and that no State, without its Consent, shall be deprived of its equal Suffrage in the Senate. 9 F. S. A. 217.

## ARTICLE VI.

All Debts contracted and Engagements entered into, before the Adoption of this Constitution, shall be as valid against the United States under this Constitution, as under the Confederation.

This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

The Senators and Representatives before mentioned, and the Members of the several State Legislatures, and all executive and judicial Officers, both of the United States and of the several States, shall be bound by Oath or Affirmation, to support this Constitution; but no religious Test shall ever be required as a Qualification to any Office or public Trust under the United States. 9 F. S. A. 218.

## ARTICLE VII.

The Ratification of the Conventions of nine States, shall be sufficient for the Establishment of this Constitution between the States so ratifying the Same. 9 F. S. A. 240.



**Amdts,**

**UNITED STATES CONSTITUTION**

**Amdts, r**

DONE in Convention by the Unanimous Consent of the States present the Seventeenth Day of September in the Year of our Lord one thousand seven hundred and Eighty seven, and of the Independence of the United States of America the Twelfth IN WITNESS whereof We have hereunto subscribed our Names,

Go: WASHINGTON—

Presidt. and Deputy from Virginia.

NEW HAMPSHIRE.

JOHN LANGDON, NICHOLAS GILMAN.  
MASSACHUSETTS.

NATHANIEL GORHAM, RUFUS KING.  
CONNECTICUT.

WM. SAML. JOHNSON, ROGER SHERMAN.  
NEW YORK.

ALEXANDER HAMILTON.  
NEW JERSEY.

WIL: LIVINGSTON, WM. PATERSON, DAVID BREARLEY, JONA:  
DAYTON.  
PENNSYLVANIA.

B. FRANKLIN, THOS. FITZSIMONS, THOMAS MIFFLIN, JARED ING-  
ERSOLL, ROBT. MORRIS, JAMES WILSON, GEO. CLYMER,  
GOUV MORRIS.  
DELAWARE.

GEO: READ, RICHARD BASSETT, GUNNING BEDFORD JUN, JACO:  
BROOM, JOHN DICKINSON.  
MARYLAND.

JAMES McHENRY, DANL. CARROLL, DAN OF ST THOS JENIFER  
VIRGINIA.

JOHN BLAIR— JAMES MADISON JR.  
NORTH CAROLINA.

WM. BLOUNT, HU WILLIAMSON, RICHD. DOBBS SPAIGHT.  
SOUTH CAROLINA.

J. RUTLEDGE, CHARLES PINCKNEY, CHARLES COTESWORTH  
PINCKNEY, PIERCE BUTLER.  
GEORGIA.

WILLIAM FEW, ABR BALDWIN.

Attest

WILLIAM JACKSON Secretary

ARTICLES IN ADDITION TO, AND AMENDMENT OF, THE CONSTITUTION OF THE  
UNITED STATES OF AMERICA, PROPOSED BY CONGRESS, AND RATIFIED  
BY THE LEGISLATURES OF THE SEVERAL STATES PURSUANT TO THE  
FIFTH ARTICLE OF THE ORIGINAL CONSTITUTION.

[ARTICLE I.]

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances. 9 F. S. A. 241.

[ARTICLE II.]

A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed. 9 F. S. A. 247.

[ARTICLE III.]

No soldier shall, in time of peace be quartered in any house, without the consent of the Owner, nor in time of war, but in a manner to be prescribed by law. 9 F. S. A. 249.

The first ten amendments to the Constitution of the United States were proposed to the legislatures of the several States by the First Congress, on the 25th of September, 1789. They were ratified by the following States, and the notifications of ratification by the governors thereof were successively communicated by the President to Congress: New Jersey, November 20, 1789; Maryland, December 19, 1789; North Carolina, December 22, 1789; South Carolina, January 19, 1790; New Hampshire, January 25, 1790; Delaware, January 28, 1790; Pennsylvania, March 10, 1790; New York, March 27, 1790; Rhode Island, June 15, 1790; Vermont, November 3, 1791; and Virginia, December 15, 1791. There is no evidence on the journals of Congress that the legislatures of Connecticut, Georgia, and Massachusetts ratified them.

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[ARTICLE IV.]

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized. 9 F. S. A. 249.

[ARTICLE V.]

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any Criminal Case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation. 9 F. S. A. 256.

[ARTICLE VI.]

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining Witnesses in his favor, and to have the Assistance of Counsel for his defence. 9 F. S. A. 324.

[ARTICLE VII.]

In suits at common law, where the value in controversy shall exceed twenty dollars, the right of a trial by jury shall be preserved, and no fact tried by a jury shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law. 9 F. S. A. 335.

[ARTICLE VIII.]

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted. 9 S. F. A. 352.

[ARTICLE IX.]

The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people. 9 S. F. A. 355.

[ARTICLE X.]

The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people. 9 F. S. A. 356.

[ARTICLE XI.]

The Judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another State, or by Citizens or Subjects of any Foreign State. 9 F. S. A. 362.

The eleventh amendment to the Constitution of the United States was proposed to the legislatures of the several States by the Third Congress, on the 5th September, 1794; and was declared in a message from the President to Congress, dated the 8th of January, 1798, to have been ratified by the legislatures of three-fourths of the States.

[ARTICLE XII.]

The Electors shall meet in their respective states, and vote by ballot for President and Vice-President, one of whom, at least, shall not be an inhabitant of the same state with themselves; they shall name in their ballots the person voted for as President, and in distinct ballots the person voted for as Vice-President, and they shall make distinct lists of all persons voted for as President, and of all persons voted for as Vice-President, and of the number of votes for each, which lists they shall sign and certify, and transmit sealed to the seat of the government of the United States, directed to the President of the Senate;—The President of the Senate shall, in the presence of the Senate and House of Representatives, open all the certificates and the votes shall then be counted;—The person having the greatest number of votes for President, shall be the President, if such number be a majority of the whole number of Electors appointed; and if no person have such majority, then from the persons having the highest numbers not exceeding three on the list of those voted for as President, the House of Representatives shall choose immediately,



by ballot, the President. But in choosing the President, the votes shall be taken by states, the representation from each state having one vote; a quorum for this purpose shall consist of a member or members from two-thirds of the states, and a majority of all the state shall be necessary to a choice. And if the House of Representatives shall not choose a President whenever the right of choice shall devolve upon them, before the fourth day of March next following, then the Vice-President shall act as President, as in the case of the death or other constitutional disability of the President. The person having the greatest number of votes as Vice-President, shall be the Vice-President, if such number be a majority of the whole number of Electors appointed, and if no person have a majority, then from the two highest numbers on the list, the Senate shall choose the Vice-President; a quorum for the purpose shall consist of two-thirds of the whole number of Senators, and a majority of the whole number shall be necessary to a choice. But no person constitutionally ineligible to the office of President shall be eligible to that of Vice-President of the United States. 9 F. S. A. 375.

The twelfth amendment to the Constitution of the United States was proposed to the legislatures of the several States by the Eighth Congress, on the 12th of December, 1803, in lieu of the original third paragraph of the first section of the second article; and was declared in a proclamation of the Secretary of State, dated the 25th of September, 1804, to have been ratified by the legislatures of three-fourths of the States.

### ARTICLE XIII.

SECTION 1. Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction. 9 F. S. A. 376.

SECTION 2. Congress shall have power to enforce this article by appropriate legislation. 9 F. S. A. 381.

The thirteenth amendment to the Constitution of the United States was proposed to the legislatures of the several States by the Thirty-eighth Congress, on the 1st of February, 1865, and was declared, in a proclamation of the Secretary of State, dated the 18th of December, 1865, to have been ratified by the legislatures of twenty-seven of the thirty-six States, viz: Illinois, Rhode Island, Michigan, Maryland, New York, West Virginia, Maine, Kansas, Massachusetts, Pennsylvania, Virginia, Ohio, Missouri, Nevada, Indiana, Louisiana, Minnesota, Wisconsin, Vermont, Tennessee, Arkansas, Connecticut, New Hampshire, South Carolina, Alabama, North Carolina, and Georgia.

### ARTICLE XIV.

SECTION 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws. 9 F. S. A. 384.

SECTION 2. Representatives shall be appointed among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice President of the United States, Representatives in Congress, the Executive and Judicial officers of a State, or the members of the Legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State. 9 F. S. A. 625.

SECTION 3. No person shall be a Senator or Representative in Congress, or elector of President and Vice President, or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any State legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or com-

fort to the enemies thereof. But Congress may by a vote of two-thirds of each House, remove such disability. 9 F. S. A. 627.

SECTION 4. The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any State shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations and claims shall be held illegal and void. 9 F. S. A. 630.

SECTION 5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article. 9 F. S. A. 631.

The fourteenth amendment to the Constitution of the United States was proposed to the legislatures of the several States by the Thirty-ninth Congress, on the 16th of June, 1866. On the 21st of July, 1868, Congress adopted and transmitted to the Department of State a concurrent resolution, declaring that "the legislatures of the States of Connecticut, Tennessee, New Jersey, Oregon, Vermont, New York, Ohio, Illinois, West Virginia, Kansas, Maine, Nevada, Missouri, Indiana, Minnesota, New Hampshire, Massachusetts, Nebraska, Iowa, Arkansas, Florida, North Carolina, Alabama, South Carolina, and Louisiana, being three-fourths and more of the several States of the Union, have ratified the fourteenth article of amendment to the Constitution of the United States, duly proposed by two-thirds of each House of the Thirty-ninth Congress: Therefore, Resolved, That said fourteenth article is hereby declared to be a part of the Constitution of the United States, and it shall be duly promulgated as such by the Secretary of State." The Secretary of State accordingly issued a proclamation, dated the 28th of July, 1868, declaring that the proposed fourteenth amendment had been ratified, in the manner hereafter mentioned, by the legislatures of thirty of the thirty-six States, viz: Connecticut, June 30, 1866; New Hampshire, July 7, 1866; Tennessee, July 19, 1866; New Jersey, September 11, 1866, (and the legislature of the same State passed a resolution in April, 1868, to withdraw its consent to it;) Oregon, September 19, 1866; Vermont, November 9, 1866; Georgia rejected it November 13, 1866, and ratified it July 21, 1868; North Carolina rejected it December 4, 1866, and ratified it July 4, 1868; South Carolina rejected it December 20, 1866, and ratified it July 9, 1868; New York ratified it January 10, 1867; Ohio ratified it January 11, 1867, (and the legislature of the same State passed a resolution in January, 1868, to withdraw its consent to it;) Illinois ratified it January 15, 1867; West Virginia, January 16, 1867; Kansas, January 18, 1867; Maine, January 19, 1867; Nevada, January 22, 1867; Missouri, January 26, 1867; Indiana, January 29, 1867; Minnesota, February 1, 1867; Rhode Island, February 7, 1867; Wisconsin, February 13, 1867; Pennsylvania, February 13, 1867; Michigan, February 15, 1867; Massachusetts, March 20, 1867; Nebraska, June 15, 1867; Iowa, April 3, 1868; Arkansas, April 6, 1868; Florida, June 9, 1868; Louisiana, July 9, 1868; and Alabama, July 13, 1868. Georgia again ratified the amendment February 2, 1870. Texas rejected it November 1, 1866, and ratified it February 18, 1870. Virginia rejected it January 19, 1867, and ratified October 8, 1869. The amendment was rejected by Kentucky January 10, 1867; by Delaware February 8, 1867; by Maryland March 23, 1867; and was not afterward ratified by either State.

#### ARTICLE XV.

SECTION 1. The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude. 9 F. S. A. 636.

SECTION 2. The Congress shall have power to enforce this article by appropriate legislation.

The fifteenth amendment to the Constitution of the United States was proposed to the legislatures of the several States by the Fortieth Congress, on the 27th of February, 1869, and was declared, in a proclamation of the Secretary of State, dated March 30, 1870, to have been ratified by the legislatures of twenty-nine of the thirty-seven States. The dates of these ratifications (arranged in the order of their reception at the Department of State) were: from North Carolina, March 5, 1869; West Virginia, March 3, 1869; Massachusetts, March 9-12, 1869; Wisconsin, March 9, 1869; Maine, March 12, 1869; Louisiana, March 5, 1869; Michigan, March 8, 1869; South Carolina, March 16, 1869; Pennsylvania, March 26, 1869; Arkansas, March 30, 1869; Connecticut, May 19, 1869; Florida, June 15, 1869; Illinois, March 5, 1869; Indiana, May 13-14, 1869; New York, March 17-April 14, 1869, (and the legislature of the same State passed a resolution January 5, 1870, to withdraw its consent to it;) New Hampshire, July 7, 1869; Nevada, March 1, 1869; Vermont, October 21, 1869; Virginia, October 8, 1869; Missouri, January 10, 1870;



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Mississippi, January 15-17, 1870; Ohio, January 27, 1870; Iowa, February 3, 1870; Kansas, January 18-19, 1870; Minnesota, February 19, 1870; Rhode Island, January 18, 1870; Nebraska, February 17, 1870; Texas, February 18, 1870. The State of Georgia also ratified the amendment February 2, 1870.

**ARTICLE XVI.**

**SECTION 1.** The Congress shall have power to lay and collect taxes on incomes, from whatever source derived, without apportionment among the several states, and without regard to any census or enumeration.

**ARTICLE XVII.**

**SECTION 1.** The Senate of the United States shall be composed of two Senators from each State, elected by the people thereof, for six years; and each Senator shall have one vote. The electors in each State shall have the qualifications requisite for electors of the most numerous branch of the State Legislatures.

When vacancies happen in the representation of any State in the Senate, the executive authority of such State shall issue writs of election to fill such vacancies: Provided, That the Legislature of any State may empower the executive thereof to make temporary appointment until the people fill the vacancies by election as the Legislature may direct.

This amendment shall not be so construed as to affect the election or term of any Senator chosen before it becomes valid as part of the Constitution.

**ARTICLE XVIII.**

**Section 1.** After one year from the ratification of this article, the manufacture, sale, or transportation of intoxicating liquors within, the importation thereof into, or the exportation thereof from the United States and all territory subject to the jurisdiction thereof for beverage purposes is hereby prohibited.

**Sec. 2.** The Congress and the several states shall have concurrent power to enforce this article by appropriate legislation.

**Sec. 3.** This article shall be inoperative unless it shall have been ratified as an amendment to the Constitution by the legislatures of the several states, as provided in the Constitution, within seven years from the date of the submission hereof to the States by the Congress.

[Certified adopted by Secretary of State January 29, 1919.]

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**ARTICLE XIX**

[Const. U. S.]

The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of sex. Congress shall have power to enforce this article by appropriate legislation.

[Certified adopted by the Secretary of State August 26, 1920.]

# STATE CONSTITUTION.

ADOPTED IN CONVENTION AT OLYMPIA, AUGUST 22, 1889; RATIFIED BY A VOTE OF THE PEOPLE, OCTOBER 1, 1889. THE PRESIDENT PROCLAIMED THE STATE ADMITTED NOVEMBER 11, 1889.

AMENDMENTS, HOW MADE .....	Art. 23	PRIVATE CORPORATIONS .....	Art. 12
BILL OF RIGHTS .....	Art. 1	PUBLIC EDUCATION .....	Art. 9
BOUNDARIES OF STATE .....	Art. 24	PUBLIC HEALTH .....	Art. 20
EXEMPTIONS FROM EXECUTION .....	Art. 19	PUBLIC INDEBTEDNESS .....	Art. 8
ELECTIONS .....	Art. 6	SCHEDULE .....	Art. 27
EXECUTIVE DEPARTMENT .....	Art. 3	STATE CAPITAL .....	Art. 14
GREAT SEAL .....	Art. 18	STATE INSTITUTIONS .....	Art. 3
HARBORS .....	Art. 15	STATE LANDS .....	Art. 16
IMPEACHMENT .....	Art. 5	Tide lands .....	Art. 17
JUDICIAL DEPARTMENT .....	Art. 4	TAXATION .....	Art. 7
LEGISLATIVE DEPARTMENT .....	Art. 2	UNITED STATES JURISDICTION .....	Art. 25
MILITIA .....	Art. 10	Compact with .....	Art. 26
MUNICIPAL CORPORATIONS .....	Art. 11	WATER .....	Art. 21

## PREAMBLE.

We, the People of the State of Washington, grateful to the Supreme Ruler of the universe for our liberties, do ordain this Constitution.

## ARTICLE I.

### DECLARATION OF RIGHTS.

**Political Power Inherent in the People.** §1. All political power is inherent in the people, and governments derive their just powers from the consent of the governed, and are established to protect and maintain individual rights.

**Supreme Law.** §2. The constitution of the United States is the supreme law of the land.

Conflict between federal and state constitutions must be clear, *Romine v. State* 7 W. 215.

U. S. Supreme court followed *Herrick v. Niesz* 16 W. 74; *In re Broad* 36 W. 449; *Trowbridge v. Spinning* 23 W. 48.

Constitution of the United States does not

apply to procedure of the State by indictment or information, *In re Rafferty* 1 W. 386; *State v. Nordstrom* 7 W. 506; *State v. Baldwin* 15 W. 15.

Legal tender act '97 p 91 void, *Dennis v. Moses* 18 W. 537.

**Due Process of Law.** §3. No person shall be deprived of life, liberty, or property without due process of law.

**Life and Liberty.**

Criminal code in treatment of the insane void, *State v. Strasburg* 60 W. 106.

Crime, plea and finding of insanity defendant held in jail is due process, *In re Brown* 39 W. 160; or is manifestly dangerous, *State ex rel. Thompson v. Snell* 46 W. 327.

Crime, incest without knowledge of relationship is due process, *State v. Glindeman* 34 W. 221.

Crime, living off of prostitution need not be knowingly, *State v. Zenner* 35 W. 249.

Contract, prohibiting females in saloons valid, *State v. Considine* 16 W. 358.

Opium smoking, act prohibiting valid, *Ah Lim v. Territory* 1 W. 156.

Attorney, punishment for contempt wrongfully invalid, *State ex rel. Rhode v. Sachs* 2 W. 373.

Labor, payment forthwith valid, *Shortall v. Puget Sound etc. Co.* 45 W. 290.

Waters, lower proprietor deprived of water for domestic use invalid, *Neilson v. Sponer* 46 W. 14.

**Due Process.**

Loss to street car company by reason of invalid ordinance requiring it to sell commutation tickets is not recoverable, *Seattle v. Puget Sound Tr., L. & P. Co.* 103 W. 41.

Prohibition law valid, *State v. Tabor* 98 W. 207.

Notice by publication to residents of state in foreclosure of chattel mortgage, etc., valid, *White v. Powers* 89 W. 502.

Game code providing wild animals are property of state does not deprive owner of property in reclaimed wild animals, *Graves v. Dunlap* 87 W. 648.

Oil inspection act is due process of law—laws unjust or unreasonable, *Standard Oil Co. v. Graves* 94 W. 291.

Taker of supposed delinquent child without proper procedure cannot be made to respond in damages—police officer's bond not liable, *Weber v. Doust* 84 W. 330, overruling *Id.* 81 W. 668.

Industrial insurance act does not violate,



**Art. 1.****STATE CONSTITUTION****Art. 1.**

State v. Mountain Timber Co. 75 W. 581.

Not violated by the Workmen's Compensation Act, State ex rel. Davis-Smith Co. v. Clausen, 65 W. 156.

Contract carries procedure for its enforcement, Murne v. Schwabacher Bros. Co. 2 W. T. 130.

Crimes, costs against complaining witness by justice of the peace due process, Colby v. Backus 19 W. 347.

Death, proceedings declaring and disposing of property after seven years invalid, Scott v. McNeal 154 U. S. 34, overruling *id.* 5 W. 309.

Judgment in default of answer to interrogatories valid, Lawson v. Black Diamond Coal Co. 44 W. 26.

Liens, attorneys fee in foreclosure valid, Ivall v. Willis 17 W. 645; Griffith v. Maxwell 20 W. 403; Littell v. Saulsberry 40 W. 550.

Liens, requiring purchaser of property to see that purchase money is applied to lien, valid, McCoy v. Cook 13 W. 158.

Liens, on lots for clearing etc. valid, Young v. Borzone 26 W. 4.

Liens for boomage charges valid, East Hoquiam Boom etc. Co. v. Neeson 20 W. 142.

Tidelands, filling and liens therefor valid, Seattle & Lake Washington etc. Co. v. Seattle Dock Co. 35 W. 503.

Injunction to restrain malicious structure valid, Karasek v. Peier 22 W. 419.

Procedure valid, 5 W. 303; 15 W. 315; 29 W. 10; 36 W. 31; 19 W. 336; 33 W. 451; 28 W. 38.

Procedure invalid, 22 W. 53; 9 W. 85; 2 W. T. 466; 3 W. 111.

Logger's lien law requiring purchaser of logs to apply purchase price to discharge of liens is valid, McCoy v. Spithill 13 W. 158.

Restitution to plaintiff in forcible entry and detainer valid, State ex rel. Loan Society v. Prather 19 W. 337.

Since other remedies are provided, failure to provide in drainage law for control of assessments made by county commissioners, procedure is due process of law, State ex rel. Latimer v. Henry 28 W. 38.

**Trade Regulation etc.**

Cities impounding stock valid police power, Wilson v. Beyers 5 W. 303.

Dower, abolished by act of territorial legislature valid, Hirsch v. Hayden 2 W. T. 223.

Barbering prohibited on Sunday valid, State v. Bergfelt 41 W. 234.

Railroad tickets restricting sale to agents valid, In re O'Neill 41 W. 174.

Sunday, closing theater on Sunday valid, State v. Herald 47 W. 538.

Horseshoers act invalid, In re Aubrey 36 W. 308.

Dentistry, act regulating valid, State v. Brown 37 W. 97.

Plumbing, act regulating invalid, State ex rel. Richey v. Smith 42 W. 237.

Barbering, act regulating business valid, State v. Walker 48 W. 8.

Attorney required to defend pauper

**Right of Petition.** §4. The right of petition and of the people peaceably to assemble for the common good shall never be abridged.

Industrial insurance act does not violate, State v. Mountain Timber Co. 75 W. 581.

without pay valid, Presby v. Klickitat County 5 W. 329.

Recording acts denying right of until all taxes paid invalid, State ex rel. Baldwin v. Moore 7 W. 173.

Trading stamp act invalid, Leonard v. Basindale 46 W. 301.

Labor, minimum wage to be paid by city valid, Gies v. Broad 41 W. 448.

Exemption in all writs for laborers etc. valid, Gleason v. Tacoma Hotel Co. 16 W. 412.

Frauds, sales in bulk law valid, McDaniels v. Connelly Shoe Co. 30 W. 549.

Food, requiring the marking of butter valid, Hathaway v. McDonald 27 W. 659.

Limitation of actions against estates valid, Fuhrman v. Power 43 W. 533.

Railroads made liable for killing stock when no fence law, invalid, O. R. & N. Co. v. Smalley 1 W. 206; double damage invalid, Joliffe v. Brown 14 W. 155.

Sunday, prohibiting business on, valid, State v. Nichols 28 W. 628.

Railroads, arbitrary deduction for standards etc. invalid, State ex rel. Washington Mill Co. v. Great N. R. Co. 43 W. 658.

Descent of property may be changed, State v. Clark 30 W. 439.

Ordinances providing eight-hour day is valid, Normile v. Thompson 37 W. 465.

Horseshoers' registration act Laws '01 p 118 invalid, In re Aubrey 36 W. 308.

Eight-hour ordinance does not violate, In re Broad 36 W. 449.

Restraint and sale of cattle under city ordinance is valid, Wilson v. Beyers 5 W. 304.

Exemptions for clerks, laborers, etc., 309 §99, valid, Gleason v. Tacoma Hotel Co. 16 W. 412.

Grain inspection law of '95 constitutional, Wright v. Lilly, Bogardus & Co. 18 W. 77.

**Taxation.**

Taxation, validating void tax invalid, Baer v. Choir 7 W. 631.

Taxation by city of agricultural land in limits valid, Ferguson v. Snohomish 8 W. 668; Frace v. Tacoma 16 W. 69.

Taxation, foreclosure of lien valid, Whatcom County v. Fairhaven Land Co. 7 W. 101.

Taxation, method of assessment may be changed at any time, Heilig v. Puyallup 7 W. 29.

Taxation, tax certificate with redemption before deed valid, State ex rel. American Sv'gs Union v. Whittlesey 17 W. 447.

Taxation, foreclosure in rem without personal notice valid, Plumb v. Dyas 38 W. 240; Allen v. Peterson 38 W. 599; by individual, notice necessary, McManus v. Morgan 38 W. 528; owners must take notice of tax, Spokane Falls & N. R. Co. v. Abitz 38 W. 8.

Taxation, owner lulled into security by promise of city officials to notify him is due process, Alexander v. Tacoma 35 W. 366.

Procedure in tax sales and issuance of tax deeds valid, State ex rel. Savings Union v. Whittlesey 17 W. 447.

**Free Speech.** §5. Every person may freely speak, write and publish on all subjects, being responsible for the abuse of that right.

Free speech does not mean license to assail the court, parties or witnesses pending trial—quasi criminal action—complaint—affidavit, *State ex rel Dorrien v. Hazel-tine* 82 W. 81.

Does not grant immunity from contemptuous publications respecting courts, *State v. Tugwell* 19 W. 238.

Criminal libel provision valid, *State v. Haffer* 94 W. 136.

**Mode of Taking Oath.** §6. The mode of administering an oath, or affirmation, shall be such as may be most consistent with and binding upon the conscience of the person to whom such oath, or affirmation, may be administered.

See *State v. Gin Pon* 16 W. 425.

**Privacy Not to Be Invaded.** §7. No person shall be disturbed in his private affairs, or his home invaded, without authority of law.

Industrial insurance act does not violate, *State v. Mountain Timber Co.* 75 W. 581.

**Irrevocable Privileges Not to Be Granted.** §8. No law granting irrevocably any privilege, franchise or immunity shall be passed by the legislature.

Exclusive right to gather garbage is not deprival of others in business of lawful occupation, *Smith v. Spokane* 55 W. 219.

**Self Crimination.—Jeopardy.** §9. No person shall be compelled in any criminal case to give evidence against himself, or be twice put in jeopardy for the same offense.

Accused may be asked if ever convicted, *State v. Brownlow* 89 W. 582.

Demanding incriminating papers of defendant in presence of jury is error—testifying is not waiver, *State v. Jackson* 83 W. 514.

No jeopardy until trial before jury legally impaneled and sworn, *State v. Herold*, 68 W. 654.

Trial stopped because one juror not sworn, no jeopardy, *State v. Herold*, 68 W. 654.

*State v. Murphy* overruled—Appeal waives as to greater crime on second trial, *State v. Ash*, 68 W. 194.

Contempt not criminal proceeding, *Dye v. Reilly* 40 W. 217.

Witness same as any other witness, *State v. Duncan* 7 W. 336; cross examination, *State v. Melvern* 32 W. 7; crimination not compulsory 17 W. 525.

Confession at preliminary hearing, *State v. Washing* 36 W. 485.

Incriminating evidence, duty of court to caution witness, *Perkins v. North End Bank* 17 W. 100.

Jeopardy, second charge for false pretenses sustained after larceny charge and acquittal for variance, *State v. Reiff* 14 W. 664.

After jury sworn to try case defendant in jeopardy, *State v. Hubbell* 18 W. 482.

Disagreement and discharge of jury is not jeopardy, *State v. Costello* 29 W. 366; *State v. Lewis* 31 W. 515.

Conviction of lower degree is acquittal of higher degree, *State v. Murphy* 13 W. 229.

Information insufficient and verdict set aside by defendant is not jeopardy, *State*

*v. Riley* 36 W. 441.

Dismissal of charge of assault and battery cannot be made lesser offense in another charge, *State v. Durbin* 32 W. 289.

Two statutes acquittal on one is not bar to charge on the other, *State v. Robinson* 12 W. 491; *State v. Reiff* 14 W. 664; *State v. Campbell* 40 W. 480.

Reversal of judgment for error in law is not jeopardy, *State v. White* 8 W. 230; *State v. Riley* 36 W. 441.

Reversal and change in name of person killed is not jeopardy, *State v. Friedrich* 4 W. 204.

Record is only proper evidence of jeopardy, *State v. Payne* 6 W. 563.

After jury sworn defendant in jeopardy—excuse for dismissal, *State v. Kingborn* 56 W. 131.

Information for misdemeanor not included offense quashed and charged for felony is not putting twice in jeopardy, *State v. Campbell* 40 W. 480.

Mistrial on insufficient information is not jeopardy, *State v. Riley* 36 W. 441.

Defendant when a witness in a criminal case may be interrogated as to his flight, *State v. Duncan* 7 W. 338.

Discharge of a defendant at the close of the State's case is jeopardy, *State v. Hubbell* 18 W. 482.

Defendant may be cross-examined, *State v. Melvern* 32 W. 7.

Though defendant offers himself as a witness he can not be compelled to criminate himself, *State v. O'Hara* 17 W. 525.

It is the duty of the court to instruct witness as to privilege, *Perkins v. North End Bank* 17 W. 100.

Cited 90 W. 416.

**Speedy Justice.** §10. Justice in all cases shall be administered openly, and without unnecessary delay.

Constitutional limitation on county indebtedness does not apply to expenses for agencies of government made mandatory by the Constitution, *Rauch v. Chapman* 16 W. 568.

**Freedom in Religion—No Public Money for the Church—Public Official or Witness Not to Be Questioned.** §11. Absolute freedom of con-



science in all matters of religious sentiment, belief and worship, shall be guaranteed to every individual, and no one shall be molested or disturbed in person or property on account of religion; but the liberty of conscience hereby secured shall not be so construed as to excuse acts of licentiousness or justify practices inconsistent with the peace and safety of the State. No public money or property shall be appropriated for or applied to any religious worship, exercise or instruction, or the support of any religious establishment: Provided, however, That this article shall not be so construed as to forbid the employment by the State of a chaplain for the State penitentiary, and for such of the State reformatories as in the discretion of the Legislature may seem justified. No religious qualification shall be required for any public office or employment, nor shall any person be incompetent as a witness or juror, in consequence of his opinion on matters of religion, nor be questioned in any court of justice touching his religious belief to affect the weight of his testimony. (Adopted November 1904).

State laws as to competency of witnesses do not apply in federal criminal procedure. *United States v. Miller* 236 Fed. 798.

Giving of credits for bible study outside school violates provision, *State ex Dearle*

*v. Frazier* 102 W. 369.

Sunday laws are within police power, *State v. Nichols* 28 W. 628; barbering, *State v. Bergfeldt* 41 W. 234.

**Special Privileges Prohibited.** §12. No law shall be passed granting to any citizen, class of citizens, or corporation other than municipal, privileges or immunities which upon the same terms shall not equally belong to all citizens, or corporations.

City may have monopoly of lighting, *Old Colony Tr. Co. v. Tacoma* 230 Fed. 389.

Right of change of venue by accused from justice of the peace is not invalidated by state not having right, *State ex rel Lathrop v. Hauptly* 86 W. 199.

Court reporter act is not grant of special privileges, *State ex rel Lindsey v. Derbyshire* 79 W. 227.

Lake Washington Canal Act is not special privilege, *Bilger v. State*, 63 W. 457.

Feed stuffs act '09 p. 705 is class legislation, *State v. Robinson* 84 W. 246.

Discrimination against appliances in fishing is not discrimination against persons *Barker v. State Fish. Com.* 88 W. 73.

Act authorizing commissioners to appoint road supervisors valid, *State ex rel. Griffith v. Newland* 37 W. 428.

Vending machine ordinance is violation, *Seattle v. Dencker* 58 W. 501.

Associations given power to "recommend" for appointment to city plans commission is not prohibited, *Bussell v. Gill* 58 W. 468.

Special act authorizing sale of school land for cemetery purposes valid, *Day v. Richardson* 54 W. 288.

Fishing locations, exclusive valid, *Walker v. Stone* 17 W. 578.

Jury commissioners, recommendations by bar valid, *State v. Vance* 29 W. 435.

Ordinance imposing penalties on employment agencies for deception is class legislation, *Spokane v. Macho* 51 W. 322.

Ordinance prohibiting soliciting business at passengers stations valid against prior contracts, *Seattle v. Hurst* 50 W. 424.

County officers, classification for mileage fee valid, *Henry v. Thurston County* 35 W. 638.

Private corporations, requirements may be made of those organized in future, *State v. Fraternal Knights etc.* 35 W. 338.

License fee for sale of articles after shipment to this state invalid, *Bacon v. Locke* 42 W. 215.

Uniformity of operation rather than scope is test, *Redford v. Spokane St. R. R.*

*Co.* 15 W. 419; *State v. Considine* 16 W. 358; *McDaniels v. Connelly Shoe Co.* 30 W. 549; *Lewis County v. Gordon* 20 W. 280.

Contract, statute of frauds valid, *Ross v. Kaufman* 48 W. 678.

Indians allowed to take fish at any time, *State v. Lewis* 45 W. 475.

Poll tax not uniform valid, *Thurston County v. Tenino etc. Co.* 44 W. 351.

Elections, territorial act granting woman's suffrage invalid, *Bloomer v. Todd* 3 W. T. 599.

Women, prohibited employment in sale of liquors valid, *State v. Considine* 16 W. 358.

Prostitution, living off earnings of prostitute, act valid. *State ex rel. Zeuner v. Graham* 34 W. 81.

Game, law applying to certain counties valid, *Hays v. Territory* 2 W. T. 286.

Taxation migratory stock preliminary tax with deduction from regular assessment invalid, *Nathan v. Spokane County* 35 W. 26.

Franchises, refusal of valid, *State ex rel. Spokane etc. Co. v. Spokane* 24 W. 53.

Sunday law excepting certain kinds of business valid, *State v. Nichols* 28 W. 628; *In re Donnellan* 49 W. 460.

Railroad tickets, restricting sale of valid, *In re Oneill* 41 W. 174.

Labor, ten hour etc. for females valid, *State v. Buchanan* 29 W. 602.

Labor, eight hour day on public work valid, *In re Broad* 36 W. 449; *Normile v. Thompson* 37 W. 465.

Contract, prohibiting hack drivers in railroad stations valid, *Seattle v. Hurst* 50 W. 42.

Pilotage, license only to voter valid, *State v. Ames* 47 W. 328.

Barbers, cities classified and greater subsequent requirements valid, *State v. Sharpless* 31 W. 191; *Chaney* 36 W. 350.

Plumbing, act regulating invalid, *State ex rel. Richey v. Smith* 42 W. 237.

Dentistry, act regulating valid, *State ex rel. Thompson v. Board* 48 W. 291; "own and manage" invalid, *State v. Brown* 37 W. 97.

Liens on tidelands for filling valid, Seattle & Lake Washington etc. Co. v. Seattle Dock Co. 35 W. 503.

Attorney's fee in action against railroad for killing stock, invalid, Jolliffe v. Brown 14 W. 155.

Ordinances against fruit peddling which excepts farmers invalid, In re Camp 38 W. 393.

Law regulating medicine and surgery valid, State v. Carey, 4 W. 424.

City ordinance prohibiting barbering on Sunday unconstitutional, Tacoma v. Krech

**Habeas Corpus.** §13. The privilege of the writ of habeas corpus shall not be suspended, unless in case of rebellion or invasion the public safety requires it.

Statute prohibiting inquiry into regular process etc. valid, In re Lybarger 2 W. 131.

**Excessive Bail, Fine or Cruel Punishment.** §14. Excessive bail shall not be required, excessive fines imposed, nor cruel punishment inflicted.

Vasectomy not unconstitutional, State v. Feilen, 70 W. 65.

Charge of assault in second degree, \$5,000 bail sustained, In re Rainey 59 W. 515; State v. Bush 41 W. 13.

**Corruption of Blood.** §15. No conviction shall work corruption of blood, nor forfeiture of estate.

**Eminent Domain.** §16. Private property shall not be taken for private use, except for private ways of necessity, and for drains, flumes or ditches on or across the lands of others for agricultural, domestic or sanitary purposes. No private property shall be taken or damaged for public or private use without just compensation having been first made, or paid into court for the owner, and no right of way shall be appropriated to the use of any corporation other than municipal, until full compensation therefor be first made in money, or ascertained and paid into the court for the owner, irrespective of any benefit from any improvement proposed by such corporation, which compensation shall be ascertained by a jury, unless a jury be waived as in other civil cases in courts of record, in the manner prescribed by law. Whenever an attempt is made to take private property for a use alleged to be public, the question whether the contemplated use be really public shall be a judicial question, and determined as such without regard to any legislative assertion that the use is public.

Eminent domain judgment vacated and warrant holder bound, Barker v. Seattle 97 W. 511.

No liability for damage to telegraph line in road in improving road, Granger T. & T. Co. v. Sloane Bros. 96 W. 333.

In private ways of necessity act supreme court dismissed writ of error because decision interlocutory, Grays Harbor Co. v. Coats-Fordney Co. 243 U. S. 251.

Finding of public necessity sustained—condemnation by water company of another or log driving company (overruling 94 W. 691), State ex South Fork L. D. Co. v. Court 102 W. 460.

State held liable for damage by construction of highway without condemnation, Great Nor. R. Co. v. State 102 W. 348.

Injury must be shown, Great Nor. Ry. Co. v. Quigg 213 Fed. 873.

Railroad's interference with ingress and egress, jarring earth, casting soot, etc., is damage—special injury must be shown, Idaho & W. N. R. R. v. Nagle 184 Fed. 598.

Garbage incinerator is "damage," though authorized by law, Jacobs v. Seattle 93 W. 171.

15 W. 296; overruled in State v. Nichols 28 W. 628.

Law requiring juror on panel to be householder and no such requirement as to talesman valid, Redford v. Spokane Street Ry. Co. 15 W. 421; but see 19 W. 57.

Grain inspection law of '95 valid, Wright v. Lilly, Bogardus & Co. 18 W. 77.

License tax on business houses using trading stamps valid, Fleetwood v. Reed 21 W. 547.

Act providing laborers' liens on general property of certain corporations valid, Fitch v. Applegate 24 W. 25.



attle 86 W. 102.

Damage by operation of railroad is not within prohibition, *Taylor v. Chicago, M. & St. P. R. Co.* 85 W. 592.

Change in grade of street by railroad under ordinance is a taking by railroad, *Dahlgren v. Chicago, M. & P. S. R. Co.* 85 W. 395.

Arbitrarily ordering telephone companies to make connections without adjustment of cost, etc., is taking and void, *State ex rel Public Service Com. v. Skagit River T. & T. Co.* 85 W. 29.

Logging road condemnation showed large supply of timber—interest of lumber company immaterial—route, control of—petitioner successful on appeal must pay costs, *State ex rel Clear Lake L. R. Co. v. Superior Court* 83 W. 445.

Mere declaration of grade of street and change is not a taking or damage, *Spokane v. Ladies' Benevolent Society* 83 W. 382.

City not liable for damage to lateral support by grading street, *Schuss v. Chehalis* 82 W. 595; *Best v. Chehalis* 82 W. 601.

Benefits of drainage district may be deducted, *Pierce County v. Thompson* 82 W. 440.

The part of a street railway operated within a city may be condemned—common user rights for part outside city, *State ex rel Peabody v. Superior Court* 77 W. 593.

Logging road condemnation sustained, *State ex rel Mountain Timber Co. v. Superior Court* 77 W. 585.

After taking damage is assessed as of the time of taking, *Distler v. Grays Harbor, etc., R. Co.* 76 W. 391.

Industrial insurance act does not violate, *State v. Mountain Timber Co.* 75 W. 581.

Re-establishment of street grade is taking contrary to above section—filing claim not required, *Provident Tr. Co. v. Spokane* 75 W. 217.

Extending slope of fill is taking—filing claim in case of city not necessary—measure of damages, *Kincaid v. Seattle* 74 W. 617; if plans defective and damage results after condemnation claim necessary *Casassa v. Seattle* 75 W. 367.

Deed carries condemnation awards not paid, *In re Twelfth Avenue South* 74 W. 132; so in execution sale *Damon v. Ryan* 74 W. 138.

Steam railroad in street is damage, *Kiel v. Grays Harbor Co.,* 71 W.

Local improvement is taxing power and not a "taking," *Bilger v. State,* 63 W. 457.

Does not apply to property not abutting upon street, *Freeman v. Centralia,* 67 W.

Under §7559, special benefits must be offset against damages, *Spokane v. Thompson,* 69 W. 650.

A city, in the original grading of a street, may not construct slope upon abutting property, *Donofrio v. Seattle,* 72 W.

No right of action for damaging property when damage is *damnum absque injuria*, *De Kay v. North Yakima Ry.,* 71 W.

Property must abut on railroad to entitle owner to damages, *Clute v. No. Yakima etc. R. Co.* 62 W. 531.

Diversion of travel by regrade is *damnum absque injuria*, *In re Fifth Ave. So., Seattle,* 62 W. 218.

Suspension of injunction pending appeal is not "taking" of property, *State ex rel.*

*Burrows v. Superior Court* 43 W. 225.

Original grading of street is not "taking etc." *Ettor v. Tacoma* 57 W. 50.

Legislative assertion that filling of low lands not a "taking etc." of no force, *Bowes v. Aberdeen* 58 W. 535.

Confers authority for condemnation of irrigating ditches—semi-arid lands—gravity and pumping—speculative purposes, *State ex rel. Galbraith v. Superior Court* 59 W. 621.

Boom site condemnation value as such is not element of damage and verdict not conclusive—nor are speculative uses elements of damage, *Grays Harbor Boom Co. v. Lownsdale* 54 W. 83.

Right to use street is property, *Smith v. Centralia* 55 W. 573.

Owner may waive right to precedent payment—cannot maintain ejectment, *Pearl Oyster Co. v. Seattle & Montana R. Co.* 53 W. 101.

Public necessity for streets determined by municipal authority, *Tacoma v. Titlow* 53 W. 217.

Valuation at time of trial, *Grays Harbor etc. R. Co. v. Kauppinen* 53 W. 238.

If there is doubt whether owner was allowed damage for going beyond line in sloping for grade of streets, injunction will not lie to restrain the same leaving city to plead award anew, *Ferry-Leary Land Co. v. Holt & Jeffery* 53 W. 584.

Interference with abutting street is "damage"—elements if a railroad, *Idaho & W. N. Ry. v. Nagle* 184 Fed. 598.

Costs in lower court and on appeal, *Kit-sap County v. Meeker* 52 W. 49.

Building railroad in street is damage, *Lund v. Idaho etc. R. Co.* 50 W. 574.

Injunction will lie to prevent change of grade of street—plaintiff must give bond, *Swope v. Seattle* 35 W. 69.

Irrigation company enjoined and allowed to condemn littoral rights, *Madson v. Spokane Valley Land etc. Co.* 40 W. 414.

Construction of slopes on change of grade of street is "damage" only, *Compton v. Seattle* 38 W. 514.

Elements of "damage" to building in a city in taking by railroad for right of way, *Smith v. St. Paul etc. Ry.* 39 W. 355.

Private light and power company organized for commercial purposes cannot condemn, *State ex rel. Tacoma Industrial Co. v. White River Power Co.* 39 W. 648.

No presumption of constitutionality of act declaring a public use—public benefit not public use—private ways defined, *Healy Lumber Co. v. Morris* 33 W. 490.

Protects owners of property against compulsory grading of streets without compensation having been first ascertained and paid, *Brown v. Seattle* 5 W. 35; also against damage to lateral support, *Parke v. Seattle* 5 W. 1.

Prepayment of damages may be waived—remedy—offsetting benefits, *Lewis v. Seattle* 5 W. 741.

Protects owners of property from ordinances granting rights of way to their damage without compensation *Hatch v. R. R. Co.* 6 W. 1; but see *Kaufman v. R. R. Co.* 11 W. 633.

Condemnation for county roads subject to this section, *Peterson v. Smith* 6 W. 163.

Increased value is not chargeable as

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damage, but the value of the land without benefits, *N. P. R. R. Co. v. Coleman* 3 W. 228; overruled in *Enoch v. R. R. Co.* 6 W. 393.

Drainage act '90 p 652 invalid, *Askam v. King County* 9 W 1; *Skagit County v. Stiles* 10 W. 388.

Road law '93 p 237 invalid, *In re Smith's Petition* 9 W. 85.

Road law '93 p. 301 invalid, *Seanor v. Commissioners* 13 W. 48.

Issuance of warrant when there is money to pay is payment, *Id.*

Damage to lands in continuous tract chargeable, *Sultan W. & P. Co. v. Weyerhaeuser Lumber Co.* 31 W. 558.

Costs cannot be taxed against non-consenting owner, *Adams County v. Dobschlag* 19 W. 357.

Dike law '88 p 90 invalid, *Snohomish County v. Hayward* 11 W. 429.  
Dike law '95 p 304 valid, *Hansen v. Hammer* 15 W. 315.

Expenses of invalid condemnation may be provided by valid condemnation, *Lewis County v. Gordon* 20 W. 80.

Reassessments for local improvements valid, *Annie Wright Seminary v. Tacoma* 23 W. 109.

Light, air and access are property, *State ex rel. Smith v. Superior Court* 26 W. 278; *Seattle Transfer Co. v. Seattle* 27 W. 520.

County drained water on another's land held to be taking of property, *Wendel v. Spokane County* 27 W. 121.

Legislature must provide for taking for private ways of necessity, *Long v. Billings* 7 W. 267.

**No Imprisonment for Debt.** §17. There shall be no imprisonment for debt, except in cases of absconding debtors.

Tort is debt and statute authorizing arrest for seduction, invalid, *Bronson v. Syverson* 88 W. 264.

Habeas corpus to admit defendant to bail, *State ex rel Syverson v. Foster* 84 W. 58.

Court's order, want of malice or probable cause not defenses—officers of corporation liable—justice of the peace not liable—mental anguish, *Hayes v. Hutchinson & Shields* 81 W. 394.

Provision not self executing—no statute providing arrest, *Hamilton v. Pacific Drug Co.* 78 W. 689.

Hotel inspection fee, \$2797, invalid, being imprisonment for debt, *State v. McFarland* 60 W. 98.

Imprisonment for drawing check without funds is valid, *State v. Pilling* 53 W. 464.

Arrest and bail is ancillary remedy, *Cline v. Harmon* 2 W. 155.

Costs against complaining witness and imprisonment for nonpayment, valid, *Colby v. Backus* 19 W. 347.

Alimony decree is not debt, *In re Cave* 26 W. 213; *In re Van Alstine* 21 W. 194.  
Contempt, commitment in, *In re Coulter* 25 W. 526.

"Debt" means contract debt not fraud or tort, *In re Milecke* 52 W. 312.  
Applies only to civil liability and not to liability imposed by law, *Colby v. Backus* 19 W. 347.

If defendant arrested and held to bail and final judgment is for money only defendant cannot be rearrested, *Burrichter v. Cline* 3 W. 135.  
Cited 90 W. 416.

**Military Subject to Civil Power.** §18. The military shall be in strict subordination to the civil power.

**Elections Shall Be Free.** §19. All elections shall be free and equal, and no power, civil or military, shall at any time interfere to prevent the free exercise of the right of suffrage.

First and second choice in direct primary question, *State ex rel. Zent v. Nichols* 50 W. 508.  
any valid—destruction of parties a political question.

**Right of Accused to Bail.** §20. All persons charged with crime shall be bailable by sufficient sureties, except for capital offenses when the proof is evident, or the presumption great.

**Trial by Jury.** §21. The right of trial by jury shall remain inviolate, but the legislature may provide for a jury of any number less than twelve in courts not of record, and for a verdict by nine or more jurors in civil cases in any court of record, and for waiving of the jury in civil cases where the consent of the parties interested is given thereto.

Has no application to equity, *Garey v. Co.* 67 W. 317.  
*Pasco* 89 W. 382.

Arbitrarily selecting grand jury from names drawn invalid—proper procedure for juries, *State ex rel Murphy v. Superior Court* 82 W. 284.

Courts cannot trench on power to find facts—sufficiency of factory guards question of fact, *Jensen v. Shaw Show Case Co.* 76 W. 419.

Industrial insurance act does not violate, *State v. Mountain Timber Co.* 75 W. 581.

Summary damages without jury, *State ex. Nicomen B. Co. v. North Shore Etc.* 2067

If cross complaint converts case to equity jury not allowed, *Nolan v. Pacific etc. Co.*, 67 W. 173.

Criminal code in treatment of insane void, *State v. Strasburg* 60 W. 106.

When action is equitable, *Bluett v. Wilce* 43 W. 492.

Deemed waived by youthful offender if not demanded, *State v. Packenbam* 40 W. 403.

Jury fee or waiver act valid, *State ex rel. Clark v. Neterer* 33 W. 535.

Will contest equitable action, *In re Clayson's Estate* 26 W. 253.



Jury trial required in recovery of specific property, *In re Alfstad's Estate* 27 W. 175; *Winston v. Crowe* 28 W. 65; *Filley v. Murphy* 30 W. 1; in injunction against judgment, *Spokane etc. Co. v. Pearson* 28 W. 118.

Jurors required to be taxpayers valid—federal constitution has no application to state courts, *State v. McDowell* 61 W. 398.

Legislature cannot take right away, but it may be waived, *State v. Ellis* 22 W. 129.

Legislature may require that jurors be

**Right of Accused to Copy of Charge—Counsel, Speedy Trial and Appeal Without Costs.** §22. In criminal prosecutions, the accused shall have the right to appear and defend in person, and by counsel, to demand the nature and cause of the accusation against him, to have a copy thereof, to testify in his own behalf, to meet the witnesses against him face to face, to have compulsory process to compel the attendance of witnesses in his own behalf, to have a speedy public trial by an impartial jury of the county in which the offense is alleged to have been committed, and the right to appeal in all cases; and, in no instance, shall any accused person before final judgment be compelled to advance money or fees to secure the rights herein guaranteed.

Admonition, without presence of defendant, of duty to agree and returning for deliberation is error, *State v. Shutzler* 82 W. 365.

Ex parte navy certificate of soundness inadmissible in murder trial, insanity as defense, *State v. Shaw* 75 W. 326.

Venue cannot be changed without consent of accused, *State ex rel Howard v. Superior Court* 88 W. 344; *State ex rel O'Phelan v. Superior Court* 88 W. 669.

Summoning a jury 'from the body of a city' improper, *State ex rel Fugita v. Milroy* 71 W. 592.

Court may not direct verdict of guilty, *State v. Holmes*, 68 W. 7.

Copies a privilege and waived by proceeding, *State v. Quinn* 56 W. 295.

Copies are a privilege and waived by proceeding in case, *State v. Newcomb* 58 W. 414.

Jury districts valid, *State v. Newcomb* 58 W. 414.

Providing venue anywhere in burglary etc. invalid, *State v. Carroll* 55 W. 588.

Preliminary examination not within provision, *State ex rel. Thurston County v. Grimes* 7 W. 445.

Crime proven must be same as that charged, *State v. Ackles* 8 W. 462.

Counsel assigned without pay, *Presby v. Klickitat County* 5 W. 330; *State v. Bush* 41 W. 13.

Burglary, intent presumed from entry (by statute) valid, *State v. Anderson* 5 W. 350.

Larceny, presumptions from possession of stock valid, *State v. Kyle* 14 W. 550.

Trial, limiting argument of counsel held error, *State v. Mayo* 42 W. 540.

Superior court cannot allow appeal in forma pauperis, *State ex rel. Langhorne v. Superior Court* 32 W. 80.

Degree of particularity required in charge of crime, *State v. King* 12 W. 297.

Right to copy does not require it to be furnished, *State v. White* 8 W. 230.

Instruction to jury to disregard misconduct of counsel is not depriving defendant of counsel, *State v. Burton* 27 W. 528.

householders, *State v. Holedger*, 15 W. 443.

Held to mean trial by jury as provided by Territorial laws—does not apply in quo warranto, *State ex rel. Mullen v. Doherty* 16 W. 382.

Right is not infringed by trial of petty offenses without jury, *State ex rel. Belt v. Kennan* 25 W. 621.

One of several defendants cannot have jury trial in equity case, though his matter proper subject, *Murray v. Okanogan Live Stock & D. B. Co.* 12 W. 259.

Cited in holding that justices' venue act does not apply to criminal cases, *State ex rel. Calderwood v. Schomber* 23 W. 578.

Nature and cause of the accusation to be construed in connection with statutes, *State v. Roberts* 22 W. 1.

Process obtained only on order of the court, *State ex rel. Carraher v. Graves* 13 W. 485.

Jury may be sent out in arguments on the law, *State v. Coella* 3 W. 114.

Defendant having once had opportunity to cross-examine, evidence may be given of deceased's witness' testimony, *State v. Cushing* 17 W. 563.

"Attendance of witnesses" means a continuance in a proper case, *State v. Williams* 18 W. 47.

"Defend in person" means that defendant cannot be manacled; nor can witness be manacled, *Id.*

Final judgment means of trial court and stenographer's report cannot be required without costs on appeal, *Stowe v. State* 2 W. 124; but see *State ex rel. Coella v. Fenimore* *Id.*

Speedy trial construed with statute and held that second trial in sixty days after order setting aside former trial, *In re Murphy* 7 W. 257.

Continuance may be had without presence of defendant, *State v. Duncan* 7 W. 336.

Dying declarations may be admitted in evidence, *State v. Baldwin*, 15 W. 15.

Accessory before the fact cannot be convicted on direct charge of rape, *State v. Gifford* 19 W. 464.

A case of a juror not being impartial, *State v. Murphy* 9 W. 204.

Discharge of defendant for want of speedy trial is not bar, 9 W. 336.

Cited 84 W. 58.

Charge of forgery without naming person defrauded does not violate section, *State v. Thomas* 102 W. 564.

**Attainder—Ex Post Facto Law—Obligation of Contracts. §23.**

No bill of attainder, ex post facto law, or law impairing the obligations of contracts shall ever be passed.

Loss to street car company by reason of invalid ordinance requiring it to sell commutation tickets is not recoverable, *Seattle v. Puget Sound Tr., L. & P. Co.* 103 W. 41.

Statute destroying lien for money advanced invalid as to existing contracts, *Title G. & S. Co. v. Coffman, Dobson & Co.* 97 W. 211.

Act postponing mortgage sale for one year is impairment of contract, *Strand v. Griffith*, 63 W. 334.

Change in method of selecting jurors is not ex post facto law, *State v. Newcomb* 58 W. 414.

Descent, law of may be changed, *Mable v. Whitaker* 10 W. 656.

Wills, nonintervention vests title in executor, *State ex rel. Phinney v. Superior Court* 21 W. 186.

Dower may be abolished, *Hamilton v. Hirsch* 2 W. T. 222.

City requiring change in fire escapes valid, *Seattle v. Hinckley* 40 W. 468.

Limitation statutes may be changed, *Allen v. Peterson* 38 W. 599.

City may dispense with certain requirements in re-assessments, *Tacoma Land Co. v. Tacoma* 14 W. 700.

Public officer has no vested right in office, *State ex rel. McReavy v. Burke* 8 W. 412.

Liens, logger's cannot be destroyed by repeal of statute, *Garneau v. Port Blakeley Mill Co.* 8 W. 467.

Remedy may or may not be vested right. A reasonable modification valid, *Murne v. Schwamacher* 2 W. T. 130; *Wintermute v. Corner* 8 W. 585; *State ex rel. Phinney v. Superior Court* 21 W. 186; *Moore v. Brownfield* 7 W. 23; *Baer v. Choir* 7 W. 631; *McAuliff v. Parker* 10 W. 141; *Swinburne v. Mills* 17 W. 611; *Palmer v. Laberee* 23 W. 409; *Canadian etc. Trust Co. v. Blake* 24 W. 102.

Contracts all made with law a part. *State ex rel. Phinney v. Superior Court* 21 W. 186.

Contract for school books cannot be impaired, *Rand, McNally & Co. v. Hartrauft*

29 W. 591.

Franchise is not contract unless exclusive, *North Spring Water Co. v. Tacoma* 21 W. 517; franchise held exclusive *Seattle v. Columbia etc. R. Co.* 6 W. 379; if in nature of contract not to be repealed, *Commercial etc. Co. v. Tacoma* 17 W. 661.

Warrants, diversion or change of fund invalid, *Eidemiller v. Tacoma* 14 W. 376; validating by school district 19 W. 120; *Townsend Gas Co. v. Hill* 24 W. 469.

Judgments, revival of past denied invalid, *Bettman v. Cowley* 19 W. 207; *Fischer v. Kittinger* 39 W. 174; applies to contract, *Williams v. Packard* 39 W. 217; judgments on tort extinguished, *Gaffney v. Jones* 39 W. 587.

Liens, priority over mortgage valid. *Sitton v. Dubois* 14 W. 624; sub-contractor's lien valid, *Spokane Mfg. Co. v. McChesney* 1 W. 609.

Exemption of life insurance invalid as to past contracts, *In re Hellbron's Estate* 14 W. 536.

Landlord and Tenant act applies to existing tenancies, *Woodward v. Winehill* 14 W. 394.

Cities, prohibition on special laws does not apply to special charters, *Tacoma Land Co. v. Pierce County* 1 W. 482.

Public officers changing compensation does not apply to fees, *State ex rel. Thurston County v. Grimes* 7 W. 445.

Taxation, method of collection may be changed, *Spokane County v. N. P. R. Co.* 5 W. 89.

Evidence, rules may be changed, *Kenney etc. Home v. Kenney* 45 W. 106; validating acknowledgements, *Skellinger v. Smith* 1 W. T. 369.

Elections, special to validate debt sustained, *Baker v. Seattle* 2 W. 576; *Hunt v. Fawcett* 8 W. 396.

Act limiting judgments void as to existing contracts, *Bettman v. Cowley* 19 W. 207.

Remedy in mortgage foreclosure cannot be changed as to existing contracts, *Swinburne v. Mills* 17 W. 611; *Dennis v. Moses* 18 W. 558.

**Right to Bear Arms. §24.** The right of the individual citizen to bear arms in defense of himself, or the state, shall not be impaired, but nothing in this section shall be construed as authorizing individuals or corporations to organize, maintain or employ an armed body of men.

**Charge of Crime by Information. §25.** Offenses heretofore required to be prosecuted by indictment may be prosecuted by information, or by indictment, as shall be prescribed by law.

Preliminary examination before information not necessary, *State v. Williams* 13 W. 335; affirmed, *State v. McGilvery* 20 W. 240.

Change from indictment to information is not ex post facto law, *Lybarger v. State*, 2 W. 552; but see *McCarty v. State* 1 W. 15 W. 509.

**Grand Jury Only When Ordered. §26.** No grand jury shall be drawn or summoned in any county, except the superior judge thereof shall so order.

Information instead of indictment is due process of law and is not ex post facto, *Lybarger v. State* 2 W. 552.



**Treason.** §27. Treason against the state shall consist only in levying war against the state, or adhering to its enemies, or in giving them aid and comfort. No person shall be convicted of treason unless on the testimony of two witnesses to the same overt act, or confession in open court.

**Hereditary Privileges.** §28. No hereditary emoluments, privileges or powers, shall be granted or conferred in this state.

**Constitution Is Mandatory.** §29. The provisions of this constitution are mandatory, unless by express words they are declared to be otherwise.

of Federal census.

Cited in State ex rel. Smith v. Neal 25 W. 264, wherein it is held that salaries of county officers must be increased on basis of Federal census. Cited in Nelson v. Troy 11 W. 435, where in it is held that the constitution applies to county officers and not to deputies.

**Constitution Not a Measure of Civil Rights.** §30. The enumeration in this constitution of certain rights shall not be construed to deny others retained by the people.

Cited in Dennis v. Moses 18 W. 571, holding act '97 relating to deficiency judgments void. Power inherent in parliament is not inherent in legislature, Maynard v. Valentine 2 W. T. 3.

**Standing Army—Quartering Soldiers.** §31. No standing army shall be kept up by this State in time of peace, and no soldier shall in time of peace be quartered in any house without the consent of its owner, nor in time of war except in the manner prescribed by law.

**Recurrence to Fundamental Principles.** §32. A frequent recurrence to fundamental principles is essential to the security of individual right and the perpetuity of free government.

**Recall of Officers.** §33. Every elective public officer in the State of Washington except judges of courts of record is subject to recall and discharge by the legal voters of the state, or of the political subdivision of the state, from which he was elected whenever a petition demanding his recall, reciting that such officer has committed some act or acts of malfeasance or misfeasance while in office, or who has violated his oath of office, stating the matters complained of, signed by the percentages of the qualified electors thereof, hereinafter provided, the percentage required to be computed from the total number of votes cast for all candidates for his said office to which he was elected at the preceding election, is filed with the officer with whom a petition for nomination, or certificate for nomination, to such office must be filed under the laws of this state, and the same officer shall call a special election as provided by the general election laws of this state, and the result determined as therein provided. (Adopted, November, 1912.)

Preceding election means next preceding election—charges prior—appeal adequate. certiorari dismissed, Mills v. Nick-eus 81 W. 409. recall and election of successor—entry on journals—act defective as to time of notice of election—ballot statement, Cudihee v. Phelps 76 W. 314.

Charters of cities superseded, State ex rel Lynch v. Fairley 76 W. 332. Charge of misfeasance for malfeasance does not invalidate, Firemens v. Sanders

Title of act, L. '11 p. 504, sufficient for 102 W. 453.

**Procedure.** §34. The legislature shall pass the necessary laws to carry out the provisions of section thirty-three (33) of this article, and to facilitate its operation and effect without delay: Provided, That the authority hereby conferred upon the legislature shall not be construed to grant to the legislature any exclusive power of law-making nor in any way limit the initiative and referendum powers reserved by the people. The percentages required shall be; state officers, other than judges, senators and representatives, city officers of cities of the first class, school district boards in cities of the first class; county officers of counties of the first, second and third classes, twenty-five per cent. Officers of all other political subdivisions, cities, towns, townships, precincts and school districts not herein mentioned, and state senators and representatives, thirty-five per cent. (Adopted, November, 1912.)

## ARTICLE II

### Legislative Department.

That article II be amended by striking all of sections 1 and 31 and inserting in lieu thereof the following:

**Legislature—Reserved Powers.** §1. The legislative authority of the State of Washington shall be vested in the legislature, consisting of a senate and house of representatives, which shall be called the legislature of the State of Washington, but the people reserve to themselves the power to propose bills, laws, and to enact or reject the same at the polls, independent of the legislature, and also reserve power, at their own option, to approve or reject at the polls any act, item, section or part of any bill, act or law passed by the legislature.

**Initiative:** (a) The first power reserved by the people is the initiative. Ten per centum, but in no case more than fifty thousand, of the legal voters shall be required to propose any measure by such petition, and every such petition shall include the full text of the measure so proposed. Initiative petitions shall be filed with the secretary of state not less than four months before the election at which they are to be voted upon, or not less than ten days before any regular session of the legislature. If filed at least four months before the election at which they are to be voted upon, he shall submit the same to the vote of the people at the said election. If such petitions are filed not less than ten days before any regular session of the legislature, he shall transmit the same to the legislature as soon as it convenes and organizes. Such initiative measure shall take precedence over all other measures in the legislature except appropriation bills and shall be either enacted or rejected without change or amendment by the legislature before the end of such regular session. If any such initiative measure shall be enacted by the legislature it shall be subject to the referendum petition, or it may be enacted and referred by the legislature to the people for approval or rejection at the next regular election. If it is rejected or if no action is taken upon it by the legislature before the end of such regular session, the secretary of state shall submit it to the people for approval or rejection at the next ensuing regular general election. The legislature may reject any measure so proposed by initiative petition and propose a different one dealing with the same subject, and in such event both measures shall be submitted by the secretary of state to the people for approval or rejection at the next ensuing regular general election. When conflicting measures are submitted to the people the ballots shall be so printed that a voter can express separately by making one cross (X) for each, two preferences, first, as between either measure and neither, and secondly, as between one and the other. If the majority of those voting on the first issue is for neither, both fail, but in that case the votes on the second issue shall nevertheless be carefully counted and made public. If a majority voting on the first issue is for either, then the measure receiving a majority of the votes on the second issue shall be law.

**Referendum:** (b) The second power reserved by the people is the referendum, and it may be ordered on any act, bill, law, or any part thereof passed by the legislature, except such laws as may be necessary for the immediate preservation of the public peace, health or safety, support of the state government and its existing public institutions, either by petition signed by the required percentage of the legal voters, or by the legislature as other bills are enacted. Six per centum, but in no case more than thirty thousand, of the legal voters shall be required to sign and make a valid referendum petition.

**When Laws Take Effect.** (c) No act, law, or bill subject to referendum shall take effect until ninety days after the adjournment of the session at which it was enacted. No act, law, or bill approved by a majority of the electors voting thereon shall be amended or repealed by the legislature within a period of two years following such enactment. But such enactment may be amended or repealed at any general regular or special election by direct vote of the people thereon.

**Petition—Vote—Publicity.** (d) The filing of a referendum petition against one or more items, sections or parts of any act, law or bill shall not delay the remainder of the measure from becoming operative. Referendum petitions against measures passed by the legislature shall be filed with the secretary of state not later than ninety days after the final adjournment of the session of the legislature which passed the measure on which the referendum



is demanded. The veto power of the governor shall not extend to measures initiated by or referred to the people. All elections on measures referred to the people of the state shall be had at the biennial regular elections, except when the legislature shall order a special election. Any measure initiated by the people or referred to the people as herein provided shall take effect and become the law if it is approved by a majority of the votes cast thereon: Provided, That the vote cast upon such question or measure shall equal one-third of the total votes cast at such election and not otherwise. Such measure shall be in operation on and after the thirtieth day after the election at which it is approved. The style of all bills proposed by initiative petition shall be: "Be it enacted by the people of the State of Washington." This section shall not be construed to deprive any member of the legislature of the right to introduce any measure. The whole number of electors who voted for governor at the regular gubernatorial election last preceding the filing of any petition for the initiative or for the referendum shall be the basis on which the number of legal voters necessary to sign such petition shall be counted. All such petitions shall be filed with the secretary of state, who shall be guided by the general laws in submitting the same to the people until additional legislation shall especially provide therefor. This section is self-executing, but legislation may be enacted especially to facilitate its operation. The legislature shall provide methods of publicity of all laws or parts of laws, and amendments to the constitution referred to the people with arguments for and against the laws and amendments so referred, so that each voter of the state shall receive the publication at least fifty days before the election at which they are to be voted upon. (Adopted, November, 1912.)

Emergency subject to review by the courts—doubt resolved in favor of legislature—emergency substitution of state land commissioners invalid, *State ex rel Brislawn v. Meath* 84 W. 302.

Steam railway car service and demurrage regulation powers not delegation of legislative power, *State ex rel Chicago. M. & St. P. R. Co.* 94 W. 274.

Initiator of measure is not legislator and courts may control—injunction against argument in proposed law. *State ex rel Berry v. Superior Court* 92 W. 16.

Amendment valid—entry on journals—not two amendments—veto not another subject—publication—judicial notice of number of voters in state, *Gottstein v. Lister* 88 W. 462.

Initiative measure may fix time when it shall go into effect, *State v. Paul* 87 W. 83.

Emergency in bond act for "jitneys" sustained—30-day extension valid, *State ex rel Case v. Howell* 85 W. 294.

Act to prevent diversion of funds by city is emergency—police power under emergency—doubt resolved in favor of emergency, *State ex rel Case v. Howell* 85 W. 281.

What is included in emergency—"support," "public institutions," and "immediate", defined, *State ex rel Blakeslee v. Clausen* 85 W. 260.

Act giving six months to complete petition after filing sustained, *State ex rel Kiehl v. Howell* 77 W. 651.

Giving power to commissioner of horticulture to determine plant diseases not delegation of legislative power, *Carstens v. De Sellem* 82 W. 643; nor are game preserves to be set apart, *Cawsey v. Brickey* 82 W. 653.

Deposit may be required for printing arguments *State ex rel Chamberlain v. Howell* 80 W. 692.

Extrinsic evidence not admissible where

no ambiguity, *State ex Aetna Co. v. Schively*, 68 W. 503.

History of act aided definition of phrase, *State ex Griffin v. Court*, 70 W. 545.

Commission form of government is not delegation of legislative power, *State ex Hunt v. Tausick*, 64 W. 69.

Appropriations for two years, Const., art. 8, §4.

Confirmation of appointments by Senate. Const., art. 13, §1.

Veto by governor, Const., art. 3, §12.

"Passage" of an act means final sanction to constitute it a law, not when it takes effect, *Cordiner v. Dear* 55 W. 479.

Constitution is not the measure of power, *State v. Clark* 30 W. 439.

Liquors, regulation of sale by election precincts invalid, *Thornton v. Territory* 3 W. T. 482.

Cities may frame own charters, *Reeves v. Anderson* 13 W. 17; may refer franchises to direct vote, *Hindman v. Boyd* 42 W. 17; may be given power to vacate streets, *Ponischil v. Hoquiam etc. Co.* 41 W. 303; power of special legislation cannot be given to city, *Tacoma v. Krech* 15 W. 296; eminent domain, cannot be assumed under charter, *Tacoma v. State* 4 W. 64; nor courts created, *In re Cloherty* 2 W. 137; nor to provide election registration, *Seymour v. Tacoma* 6 W. 138; nor to extend boundaries, *State ex rel. Snell v. Warner* 4 W. 773; nor to provide tribunal for election contest. *State ex rel. Fawcett v. Superior Court*.

Police power, general welfare and morals, *Ah Lim v. Territory* 1 W. 156; *State v. Considine* 16 W. 358; *Karasek v. Peier* 22 W. 419.

Court will go beyond original rolls to determine legislative intent, *Scouten v. Whatcom* 33 W. 273.

Enrolled law regular on its face is conclusive of the regularity of its passage. *State ex rel. Reed v. Jones* 6 W. 453.

Legislature may supplement constitutional power of cities to frame charters and such is not delegation of powers, *Reeves v. Anderson* 13 W. 17.

Authorization of counties to employ deputies to county officers is not delegation of powers, *Nelson v. Troy* 11 W. 435.

Appropriation by legislature for unauthorized claim is not a ratification, but a compromise and settlement, and courts will not take jurisdiction, *Young v. State*

19 W. 634.

Legislative and judicial power defined, *Maynard v. Valentine* 2 W. T. 3.

Statute authorizing court to organize municipal corporations on petition is invalid, *Territory ex rel. Kelly v. Stewart* 1. W. 98.

Amendment is republican form of government, *State v. Owen* 97 W. 466.

Additional parts of petition may be filed within time, *State ex Howell v. Court* 97 W. 569.

**House of Representatives.** §2. The House of Representatives shall be composed of not less than 63 nor more than 99 members. The number of senators shall not be more than one-half nor less than one-third of the number of members of the House of Representatives. The first legislature shall be composed of 70 members of the House of Representatives, and 35 senators.

**Census—Reapportionment.** §3. The legislature shall provide by law for an enumeration of the inhabitants of the State in the year one thousand eight hundred and ninety-five and every ten years thereafter; and at the first session after such enumeration, and also after each enumeration made by the authority of the United States, the legislature shall apportion and district anew the members of the Senate and House of Representatives, according to the number of inhabitants, excluding Indians not taxed, soldiers, sailors and officers of the United States army and navy in active service.

Court cannot compel apportionment—last obtains until new one made—inequality to vitiate—deligence, *State ex rel Warson v. Howell* 92 W. 540.

Courts may receive testimony as to population to determine salary of justice of the peace, *Anderson v. Whatcom County* 15 W. 47.

**Representatives—Election and Term of.** §4. Members of the House of Representatives shall be elected in the year eighteen hundred and eighty-nine at the time and in the manner provided by this constitution, and shall hold their offices for the term of one year and until their successors shall be elected.

**First Election—Subsequent Elections.** §5. The next election of the members of the House of Representatives after the adoption of this constitution shall be on the first Tuesday after the first Monday of November, eighteen hundred and ninety, and thereafter, members of the House of Representatives shall be elected biennially and their term of office shall be two years; and each election shall be on the first Tuesday after the first Monday in November, unless otherwise changed by law.

**Senators—Election and Term of.** §6. After the first election the senators shall be elected by single districts of convenient and contiguous territory, at the same time and in the same manner as members of the house of representatives are required to be elected; and no representative district shall be divided in the formation of a senatorial district. They shall be elected for the term of four years, one-half their number retiring every two years. The senatorial districts shall be numbered consecutively, and the senators chosen at the first election had by virtue of this constitution, in odd numbered districts, shall go out of office at the end of the first year; and the senators elected in the even numbered districts, shall go out of office at the end of the third year.

**Eligibility.** §7. No person shall be eligible to the legislature who shall not be a citizen of the United States and a qualified voter in the district for which he is chosen.

**Each House a Judge of Its Members—Quorum—Attendance.** §8. Each house shall be the judge of the election, returns and qualifications of its own members, and a majority of each house shall constitute a quorum to do business; but a smaller number may adjourn from day to day and may compel the attendance of absent members, in such manner and under such penalties as each house may provide.

Does not prevent judicial primary contest, *State ex rel. McAvoy v. Gilliam* 60 W. 420.



**Power to Make Rules—Expulsion of Members.** §9. Each house may determine the rules of its own proceedings, punish for contempt and disorderly behavior, and, with the concurrence of two-thirds of all the members elected, expel a member, but no member shall be expelled a second time for the same offense.

**Officers of Each House—Lieutenant Governor.** §10. Each house shall elect its own officers; and when the lieutenant governor shall not attend as president, or shall act as governor, the senate shall choose a temporary president. When presiding, the lieutenant governor shall have the deciding vote in case of an equal division of the senate.

**Journal—Adjournment.** §11. Each house shall keep a journal of its proceedings and publish the same, except such parts as require secrecy. The doors of each house shall be kept open, except when the public welfare shall require secrecy. Neither house shall adjourn for more than three days, nor to any place other than that in which they may be sitting, without the consent of the other.

**Biennial Sessions—Length of Sessions.** §12. The first legislature shall meet on the first Wednesday after the first Monday in November, A. D. 1889. The second legislature shall meet on the first Wednesday after the first Monday in January, A. D. 1891, and sessions of the legislature shall be held biennially thereafter, unless specially convened by the governor, but the times of meeting of subsequent sessions may be changed by the legislature. After the first legislature the sessions shall not be more than sixty days.

Extra session, Const., art. 3, §7.

**Member Can Not Accept Other Office.** §13. No member of the legislature during the term for which he is elected, shall be appointed or elected to any civil office in the State, which shall have been created, or the emoluments of which shall have been increased during the term for which he was elected.

**Federal Officer Can Not Be Member.** §14. No person, being a member of Congress, or holding any civil or military office under the United States or any other power, shall be eligible to be a member of the legislature; and if any person after his election as a member of the legislature, shall be elected to Congress or be appointed to any other office, civil or military, under the government of the United States, or any other power, his acceptance thereof shall vacate his seat: Provided, That officers in the militia of the State who receive no annual salary, local officers and postmasters, whose compensation does not exceed three hundred dollars per annum, shall not be ineligible.

**Vacancies.** §15. The governor shall issue writs of election to fill such vacancies as may occur in either house of the legislature.

**Exemption From Civil and Criminal Process.** §16. Members of the legislature shall be privileged from arrest in all cases except treason, felony and breach of the peace; they shall not be subject to any civil process during the session of the legislature, nor for fifteen days next before the commencement of each session.

**Freedom of Debate.** §17. No member of the legislature shall be liable in any civil action or criminal prosecution whatever for words spoken in debate.

**Form of Enacting Clause.** §18. The style of the laws of the state shall be: "Be it enacted by the legislature of the State of Washington." And no law shall be enacted except by bill.

**Bill Shall Embrace But One Subject, Title.** §19. No bill shall embrace more than one subject, and that shall be expressed in the title.

Act not broadened by title, *In re Johnson Taxicab & T. Co.* 90 W. 416.  
224 Fed. 180. Cases reviewed and distinguished, *Car-Jitney bus act '15 valid*, *State v. Seattle* *stems v. De Sellem* 82 W. 643, citing 59

W. 76.

Disposition of fines in school code valid, Slayden v. Carr 94 W. 412.

Act providing for redetermination of diking benefits and financing work are one subject, State ex rel Conner v. Superior Court 81 W. 480.

Title of appropriation act sufficient to include increase in salary state officer, State ex rel Jones v. Clausen 78 W. 103.

Public service commission act 1911, held, title covered taxation, Spokane & I. E. R. Co. v. Spokane County 75 W. 72.

"An act relating to salaries and expenses of horticultural inspectors" may authorize suits by state against counties for tax, State v. Asotin County 79 W. 634.

Act may contain any provisions germane to the title, State ex rel. Great Northern Ry. v. Superior Court, 68 W. 572.

Purpose of title merely to point out the subject matter of the proposed legislation, National Surety Co. v. Bratnaber Lumber Co., 67 W. 601.

Title is sufficient if it reasonably leads to inquiry into the body of the act, Sorenson v. Kittitas Reclamation Dist., 70 W. 528.

Title sufficient if it is broad enough to show one reading it what matter is being legislated upon, Seattle Nat. Bank v. Ally, 66 W. 610.

"An act for the protection of builders" cannot include criminal provisions, State v. Clark 48 W. 664.

Act L '91 46 has sufficient title, Erickson v. Hodges 179 Fed. 177.

Act L '09 174 title insufficient to amend law relating to registration of voters requiring party affiliations, State ex rel. Arnold v. Mitchell 55 W. 513.

"An act relating to trade marks" may contain penal provisions, State v. Montgomery 57 W. 192.

Act relating to franchises sufficient for regulations concerning cities, Ewing v. Seattle 55 W. 229.

Title of school code sufficient to require compulsory vaccination, State ex rel. McFadden v. Shorrock 55 W. 208.

Primary election act valid, State ex rel. Zent v. Nicholas 50 W. 508.

Tax act includes exemptions, State ex rel. Wolfe v. Parmenter 50 W. 164.

Title of wages in money act sufficient and act constitutional, Shortall v. Puget Sound B. & D. Co. 45 W. 290.

Public utilities act L'05 300 has but one subject, Aylmore v. Seattle 48 W. 42.

Act §4513 to protect stockholders, etc., of corporations invalid in part, State v. Merchant 48 W. 69.

Title of county engineer act held to be sufficient to include salary, State ex rel. Funke v. Com'rs 48 W. 461.

County aid to canals act insufficient as to validating provisions, State ex rel. Porter v. King County, 49 W. 619.

Criminal code 1881 included offense of opening theater on Sunday, In re Donellan 49 W. 460.

Pilot regulations act valid, State v. Ames 47 W. 328.

Search warrant for liquors valid, State v. Moran 46 W. 596.

Wages payable in money act valid, Shortall v. Puget Sound etc. Co. 45 W. 290.

Eminent domain act valid, Fletcher v. Seattle 43 W. 627.

Drainage act invalid in part, State ex rel. Matson v. Superior Court 42 W. 491.

Living "with" prostitute not in act L '03 230, State v. Poole 42 W. 192.

Title Inheritance tax act includes wills, In re White's Estate 42 W. 360.

Title of trust companies act sufficient to prohibit use of word trust by other companies, State ex rel. Osborne, Tremper & Co. v. Nichols 38 W. 309.

Ad valorem probate fees not properly included in act relating to fees, State ex rel. Nettleton v. Case 39 W. 117.

Provisions of criminal Code 1881 relating to bastardy are invalid, State v. Tiedman 32 W. 294.

Act relating to eminent domain by counties for public works by the State or the United States (§7609) has sufficient title, Lancey v. King County 15 W. 9.

Title of amendatory act '95, §3197, is not broad enough to embrace validation of past debts, Percival v. Cowychee, etc., District 15 W. 480.

The crimes of arson and attempted arson properly included in one act, State v. Hall 24 W. 255.

Title of act to protect innocent purchasers of community real property (95 §57) too narrow to include property held by any other title, Sengfelder v. Hill 21 W. 371.

Act providing for the commencement of civil actions is valid and properly includes the bringing of actions to trial, McMaster v. Thresher Co. 10 W. 147.

Law cannot be amended by mere reference to section of Ballinger's Code, State ex rel. Seattle Electric Co. v. Superior Court 28 W. 317.

Quaere: Can a law be amended by mere reference to the section number of the Code of 1881? Marston v. Humes 3 W. 267.

Act amending Code 1881 by reference merely to section number as in the act of L'86 p 84 prescribing age of consent at 16 years in rape is valid, In re Moore 81 Fed. Rep. 356.

Amendment by reference to section of Code 1881 is not sufficient title, Harland v. Territory 3 W. T. 131.

Act of '97 p 331 abolishing municipal courts is sufficient to cover provision for continuance of such courts to a specified time, Bogue v. Seattle 19 W. 396.

Act relating to conditional sales, §9767, sufficient to authorize the recording of such sales, Johnston v. Wood 19 W. 441.

Cited in Parish v. Reed 2 W. 491, in obiter dicta holding that legislature could not provide for agency for expenditure or appropriation in a general appropriation bill.

The objections should be grave and the conflict between the statute and the constitution palpable before an act will be declared void, Seymour v. Tacoma 6 W. 149.

Act providing for the incorporation of cities and towns, §637, is sufficient to provide for their enlargement and consolidation, Commissioners of King County v. Davies 1 W. 290.

Act of '90 p 51, authorizing school districts to borrow money, has sufficient title, Van Houten v. Routh 1 W. 306.



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Act of '90 p 520, authorizing cities and towns to construct internal improvements, sufficient to authorize water works, sewers and artificial light plants, *Yesler v. Seattle* 1 W. 308.

Act providing for the prosecution of offenses on information §9257 properly dispenses with grand jury except on order of the court, *In re Rafferty* 1 W. 387.

Title of act providing a school code (L'97 356) insufficient to include the defining of misdemeanors, *State ex rel. Henry v. MacDonald* 25 W. 122.

Tax act title §6883 sufficient for the issuance of delinquency certificates and guarantee to purchaser against loss, *State*

*ex rel. Savings Union v. Whittlesey* 17 W. 450.

Repeals may or may not be required to be expressed in the title, *Howlett v. Cheetham* 17 W. 626.

Purpose of provision stated, *State ex rel. Cole v. New Whatcom* 3 W. 10.

Liens by judgment has sufficient title to provide for act providing liens by justice's judgment, *Grant v. Cole* 23 W. 542.

Title of act relative to Skamania County is sufficient, *Clarke County v. Braze* 1 W. T. 199.

Title of appeals act '83 is sufficient, *Baker v. Pruvett* 3 W. T. 474.

Cited 75 W. 610.

**Bill May Originate in Either House.** §20. Any bill may originate in either house of the legislature, and a bill passed by one house may be amended in the other.

**Yeas and Nays Entered on Demand.** §21. The yeas and nays of the members of either house shall be entered on the journal, on the demand of one-sixth of the members present.

**Yeas and Nays, Majority on Final Passage.** §22. No bill shall become a law unless on its final passage the vote be taken by yeas and nays, the names of the members voting for and against the same be entered on the journal of each house, and a majority of the members elected to each house be recorded thereon as voting in its favor.

**Pay and Mileage of Members.** §23. Each member of the legislature shall receive for his services five dollars for each day's attendance during the session, and ten cents for every mile he shall travel in going to and returning from the place of meeting of the legislature, on the most usual route.

**Lotteries and Divorces Prohibited.** §24. The legislature shall never authorize any lottery or grant any divorce.

Section is self-executing, *Seattle v. Chin* prohibited, though authorized prior to the state constitution, *Seattle v. Chin* Let 19 W. 38.

Lotteries for charitable purposes prohibited, *Seattle v. Chin* Let 19 W. 38.

**No Extra, Nor Change of Compensation.** §25. The legislature shall never grant any extra compensation to any public officer, agent, servant, or contractor, after the services shall have been rendered, or the contract entered into, nor shall the compensation of any public officer be increased or diminished during his term of office.

Pay not to be changed, Const., art. 11, §8

Salary as appropriated for cannot be changed by general act, *State ex rel. Ross v. Clausen* 47 W. 607.

Changing title and duties of office, salary cannot be changed, *State ex rel. Funke v. Board* 48 W. 461.

Special duties and pay may be abolished, *Heilig v. Puyallup* 7 W. 29.

Allowance of deputies valid, *Nelson v. Troy* 11 W. 435.

Act changing salary presumed to apply to future officers—no pay for increase of duties, *State ex rel. Funke v. Com'rs* 48 W. 461.

Policemen may be allowed witness fees, officer unless so provided, *Young v. Millett* *State v. Sairllaird* 22 W. 367.

Additional duties may carry additional compensation, *State ex rel. Seattle v. Car-*

*son* 6 W. 251; but such compensation must be provided by the authority imposing the duties, it cannot be claimed by any officer unless so provided, *Young v. Millett* 19 W. 486.

Fees may be changed during term of office, *State ex rel. Thurston County v. Grimes* 7 W. 445.

Extra compensation allowed only for extra duties applies to employees of the legislature, *State ex rel. Eshelman v. Cheetham* 21 W. 437.

Act of '91 p 321 §105, providing attorneys' fees for prosecuting attorney in delinquent tax cases is void, *Spokane County v. Allen* 9 W. 229.

State cannot be sued in federal courts, *Title Guar. & S. Co. v. Guernsey* 205 Fed. 94.

**Suits Against the State.** §26. The legislature shall direct by law, in what manner, and in what courts suits may be brought against the state. Creates no liability upon state, *Riddach v. State*, 68 W. 329.

State cannot have set-off in mandamus

State is not liable for damage by negli-

Action to adjudicate priority of lien of the State and mortgage of private party  
gence or malfeasance of its officers under authorized by the statute, Northwestern  
act (§6260) authorizing actions against the Etc. Bank v. State 18 W. 73.  
State, Billings v. State 27 W. 288.

**Vote Viva Voce.** §27. In all elections by the legislature the mem-  
bers shall vote viva voce, and their votes shall be entered on the journal.

**Special Legislation Prohibited.** §28. The legislature is prohibited  
from enacting any private or special laws in the following cases:

1. For changing the names of persons, or constituting one person the  
heir at law of another.

2. For laying out, opening or altering highways, except in cases of  
state roads extending into more than one county, and military roads to aid  
in the construction of which lands shall have been, or may be granted by,  
Congress.

3. For authorizing persons to keep ferries wholly within this state.

4. For authorizing the sale or mortgage of real or personal property  
of minors, or others under disability.

5. For assessment or collection of taxes or for extending the time for  
collection thereof.

6. For granting corporate powers or privileges.

7. For authorizing the apportionment of any part of the school fund.

8. For incorporating any town or village or to amend the charter  
thereof.

9. From giving effect to invalid deeds, wills or other instruments.

10. Releasing or extinguishing in whole, or in part, the indebtedness,  
liability or other obligation, of any person, or corporation to this state, or  
to any municipal corporation therein.

11. Declaring any person of age or authorizing any minor to sell, lease,  
or encumber his or her property.

12. Legalizing except as against the state, the unauthorized or invalid  
act of any officer.

13. Regulating the rates of interest on money.

14. Remitting fines, penalties or forfeitures.

15. Providing for the management of common schools.

16. Authorizing the adoption of children.

17. For limitation of civil or criminal actions.

18. Changing county lines, locating or changing county seats; Pro-  
vided, This shall not be construed to apply to the creation of new counties.

Action to establish county line §1488;  
joint survey §1476.

Court reporter act does not grant special  
privileges, State ex rel Lindsey v. Derby-  
shire 79 W. 227.

Act authorizing commission form of gov-  
ernment does not violate clause 8, State ex  
Hunt v. Tausick, 64 W. 69.

Not violated by laws concerning cities of  
a specified population, State ex rel. Hunt  
v. Tausick, 64 W. 69.

Cities, former special charters not with-  
in constitution, Tacoma Land Co. v. Pierce  
County 1 W. 482; given different powers  
under school law valid, Holmes etc. Co.  
v. Hedges 13 W. 696; special charters un-  
der Territory valid, Alger v. Hill 2 W.  
344; L '90 135 §6 invalid, Denver v. Spo-  
kane Falls 7 W. 226.

Corporate privileges: armory act L '03  
209 invalid, Terry v. King County 43 W.  
61; eminent domain by boom companies  
valid, North Riv. B. Co. v. Smith 15 W.  
138.

Drainage laws are not special legisla-  
tion, Lewis County v. Gordon 20 W. 80;  
Skagit County v. McLean 20 W. 92.

Validating acts are not special legisla-  
tion: invalid city warrants, Hunt v. Faw-  
cett 8 W. 396; debt under invalid law,  
State ex rel. Latimer v. Henry 28 W. 38;  
acts of de facto city as debt, State ex rel.  
Traders' Bank v. Winter 15 W. 407, con-  
tracts Hemen v. Ballard 16 W. 418.

Cited in State ex rel. Cole v. New What-  
com 3 W. 7.

A law giving boom companies the right  
of eminent domain is not contrary to this  
section, North River Boom Co. v. Smith 15  
W. 139.

Act authorizing reincorporation of void  
municipal corporations is not a special  
law, Town of Denver v. Spokane Falls 7  
W. 227.

Act, L. '17, ch. 3, requiring Pierce county  
to levy tax in aid of U. S. army post does  
not violate subd. 6, State ex Comrs. v.  
Clausen 95 W. 214.

**Convict Labor.** §29. After the first day of January eighteen hun-  
dred and ninety the labor of convicts of this state shall not be let out by  
contract to any person, co-partnership, company or corporation, and the  
legislature shall by law provide for the working of convicts for the benefit  
of the state.



**Corrupt Solicitation of Public Officers—Incriminating Evidence—Private Interest in Bill.** §30. The offense of corrupt solicitation of members of the legislature, or of public officers of the State or any municipal division thereof, and any occupation or practice of solicitation of such members or officers to influence their official action, shall be defined by law, and shall be punished by fine and imprisonment. Any person may be compelled to testify in any lawful investigation or judicial proceeding against any person who may be charged with having committed the offense of bribery or corrupt solicitation, or practice of solicitation, and shall not be permitted to withhold his testimony on the ground that it may criminate himself or subject him to public infamy, but such testimony shall not afterwards be used against him in any judicial proceeding—except for perjury in giving such testimony—and any person convicted of either of the offenses aforesaid, shall as part of the punishment therefor, be disqualified from ever holding any position of honor, trust or profit in this State. A member who has a private interest in any bill or measure proposed or pending before the legislature, shall disclose the fact to the house of which he is a member, and shall not vote thereon.

**Time When Laws Take Effect.** §31. Stricken by amendment to §2 Art. 2

Emergency acts controls another without emergency enacted at same session. *repeal of June 12, 1901, In re Boyce 25 W. 612.*

Emergency in amendatory act does not affect original act, *Oregon R. & N. Co. v. Capitol purchase act, Laws '01 p 54, construed an appropriation bill, State ex rel. Railroad Com'n 52 W. 17.*

Act of '01 p 100, relating to death war- *Stratton v. Rogers 24 W. 417.*

**Bill Must Be Signed by Presiding Officers.** §32. No bill shall become a law until the same shall have been signed by the presiding officer of each of the two houses in open session, and under such rules as the legislature shall prescribe.

**Alien Ownership of Lands.** §33. The ownership of lands by aliens, other than those who in good faith have declared their intention to become citizens of the United States, is prohibited in this State, except where acquired by inheritance, under mortgage or in good faith in the ordinary course of justice in the collection of debts; and all conveyances of lands hereafter made to any alien directly or in trust for such alien shall be void: Provided, That the provisions of this section shall not apply to lands containing valuable deposits of minerals, metals, iron, coal, or fire-clay, and the necessary land for mills and machinery to be used in the development thereof and the manufacture of the products therefrom. Every corporation, the majority of the capital stock of which is owned by aliens, shall be considered an alien for the purposes of this prohibition.

State only can raise question of alien ownership—alien's conveyance to citizen valid, *Prentice v. How 84 W. 136.* State ex rel. *Winston v. Morrison 18 W. 69<sup>4</sup>*

After conveyance to citizen state cannot escheat, *State ex rel. Atkinson v. World etc. Co. 46 W. 104.* Majority of stockholders must be citizens during all time of ownership—lease for forty-nine years held void, *State ex rel. Winston v. Hudson Land Co. 19 W. 85.*

Limestone etc. are minerals and within provision. *State ex rel. Atkinson v. Evans 46 W. 219.* Mortgagor may convey to alien in satisfaction of mortgage, *Oregon Mortgage Co. v. Carstens 16 W. 165.*

Conveyance to alien valid except against the state—title by inheritance—state must act in lifetime of owner, *Abrams v. State 45 W. 327.* Alien holds title against all the world except the State, *id; Goongan v. Richardson 16 W. 373.*

Incapacity of alien may be interposed as defense in condemnation—foreign stockholders of domestic corporations, *State ex rel. Morrell v. Superior Court 33 W. 542.* Alien holding title defeasible by the State can convey good title, *id.* Will is not void because it contains a devise to an alien, *Brigham v. Kenyon 76 Fed. Rep. 30.*

Lease for ninety-nine years held invalid.

**Bureau of Statistics.** §34. There shall be established in the office of the secretary of state, a bureau of statistics, agriculture and immigration, under such regulations as the legislature may provide.

**Dangerous Employments to Be Regulated.** §35. The legislature shall pass necessary laws for the protection of persons working in mines, factories and other employments dangerous to life or deleterious to health; and fix pains and penalties for the enforcement of same.

Public health proper subject of police Female, hours labor, State v. Buchanan power, State v. Carey 4 W. 424; Hathaway 29 W. 602; employment in the sale of v. McDonald 27 W. 659; State v. Sharpless liquors, State v. Considine 16 W. 358. 31 W. 191; In re Thompson 36 W. 377. Sunday laws, State v. Nichols 28 W. 628.

**Bill Must Be Introduced Ten Days Before Close of Session.** §36. No bill shall be considered in either house unless the time of its introduction shall have been at least ten days before the final adjournment of the legislature, unless the legislature shall otherwise direct by a vote of two-thirds of all the members elected to each house, said vote to be taken by yeas and nays and entered upon the journal, or unless the same be at a special session.

**Amended Law to Be Set Out in Full.** §37. No act shall ever be revised or amended by mere reference to its title, but the act revised or the section amended shall be set forth at full length.

Local improvement statute requiring general tax purchaser to discharge local improvement liens is not amendment of the general statute, Holzman v. Spokane 91 W. 418. plete in themselves though in conflict or may substitute, State ex rel. Zent v. Nichols 50 W. 508; Northern Pac. R. Co. v. Pierce County 51 W. 12.

Original act may be amended without reference to intervening amendments, Whitfield v. Davies 78 W. 256; Board of Directors, etc., v. Scott 79 W. 434.

Court will not pass on validity of initiative amendment prior to its passage, State ex rel Griffith v. Superior Court 92 W. 44.

Acts of legislature on same subject as charter provisions do not violate above provision, Haynes v. Seattle 83 W. 51, 87 W. 375.

Act complete in itself valid though it covers subject of existing law, Carstens v. De Sellem 82 W. 643.

Does not apply to substitute act complete in itself, State ex rel Jones v. Clausen 78 W. 103.

Adding commission form of government for cities valid—germane amendments, State ex Hunt v. Tausick 64 W. 69.

Applies to direct amendments, Mills v. Smith 177 Fed. 652.

Act complete in itself is valid though it amends existing law, Spokane Grain etc. Co. v. Lyttaker 59 W. 76.

Provision is not directed at laws com-

Repeals by implication not favored, Callvert v. Winsor 26 W. 368.

With express amendment part of former law held in force, State ex rel. Davis v. Clausen 47 W. 372.

Special act may be repealed by general act, Denton v. Walla Walla 50 W. 77; will not repeal general law, Corbett v. Territory 1 W. T. 431.

New law complete in itself on existing subject may be enacted, In re Dietrick 32 W. 471.

Act '97 amending law defining rape is valid, State v. Scott 32 W. 279.

Parts of sections left out of amendatory act are deemed to be repealed, Mudgett v. Liebes 14 W. 482; Bierer v. Blurock 9 W. 63.

Act '97 p 93, providing for additional exemption from execution and attachment, void because not incorporated in former law, Copeland v. Pirie 26 W. 481.

Additional exemption act '97 p 93 invalid because not incorporated to make new law read complete, In re Buelow 98 Fed. Rep. 86.

Cited 92 W. 347.

**Amendments Must Be Germane.** §38. No amendment to any bill shall be allowed which shall change the scope and object of the bill.

**Railroad Passes.** §39. It shall not be lawful for any person holding public office in this State to accept or use a pass or to purchase transportation from any railroad or other corporation, other than as the same may be purchased by the general public, and the legislature shall pass laws to enforce this provision.

Railroads shall not grant pass, Const., art 12, §20.

## ARTICLE III.

### THE EXECUTIVE.

**Executive Department.** §1. The executive department shall consist of a governor, lieutenant governor, secretary of state, treasurer, auditor, attorney general, superintendent of public instruction, and a commissioner of public lands, who shall be severally chosen by the qualified electors of the state at the same time and place of voting as for the members of the legislature.



State may sue county for horticultural tax, *State v. Asotin County* 79 W. 634.

Appointment of officers state institutions, Const., art. 13, §1.

Member of board of regents agricultural college is not state officer to give Supreme Court original jurisdiction in mandamus, *State ex rel. Stearns v. Smith* 6 W. 496.

Officers not limited to those enumerated and member of State Board of Education is an executive officer, *State v. Womack* 4 W. 19.

Attorney General cannot file information in quo warranto of his own motion, *State ex rel. Atty. Gen. v. Seattle Gas Co.* 28 W. 488.

**Governor—Term of Office.** §2. The supreme executive power of this State shall be vested in a governor, who shall hold his office for a term of four years, and until his successor is elected and qualified.

Governor is head of executive department, *State v. Womack* 4 W. 19; *State v. Smith* 6 W. 496; *id.* 9 W. 195.

Governor is the only authority to direct

**Terms of Other Officers.** §3. The lieutenant governor, secretary of state, treasurer, auditor, attorney general, superintendent of public instruction and commissioner of public lands, shall hold their offices for four years respectively, and until their successors are elected and qualified.

**Returns and Canvass of Elections—Contests—When Term Commences.** §4. The returns of every election for the officers named in the first section of this article shall be sealed up and transmitted to the seat of government by the returning officers, directed to the secretary of state, who shall deliver the same to the speaker of the house of representatives at the first meeting of the house thereafter, who shall open, publish and declare the result thereof in the presence of a majority of the members of both houses. The person having the highest number of votes shall be declared duly elected, and a certificate thereof shall be given to such person, signed by the presiding officers of both houses; but if any two or more shall be highest and equal in votes for the same office, one of them shall be chosen by the joint vote of both houses. Contested elections for such officers shall be decided by the legislature in such manner as shall be decided by law. The terms of all officers named in section one of this article shall commence on the second Monday in January after their election, until otherwise provided by law.

**Officers' Written Opinion to Governor.** §5. The governor may require information in writing from the officers of the state upon any subject relating to the duties of their respective offices, and shall see that the laws are faithfully executed.

Governor has no authority to employ expert assistance to examine books and accounts of the State Penitentiary, *Young v. State* 19 W. 634.

Governor is the only State officer with authority to direct quo warranto proceedings, *State ex rel. Atty. Gen. v. Seattle Gas Co.* 28 W. 498.

**Governor's Message.** §6. He shall communicate at every session by message to the legislature the condition of the affairs of the state, and recommend such measures as he shall deem expedient for their action.

**Extra Session of Legislature.** §7. He may, on extraordinary occasions, convene the legislature by proclamation, in which shall be stated the purposes for which the legislature is convened.

Legislative action not restricted to purpose declared in proclamation, *State v. Fair* 35 W. 127.

**Governor is Commander in Chief of Militia.** §8. He shall be commander in chief of the military in the state except when they shall be called into the service of the United States.

**Pardoning Power.** §9. The pardoning power shall be vested in the governor under such regulations and restrictions as may be prescribed by law.

**Succession in Office of Governor.** §10. In case of the removal, resignation, death or disability of the Governor, the duties of the office shall

devolve upon the Lieutenant Governor; and in case of a vacancy in both the offices of Governor and Lieutenant Governor, the duties of the Governor shall devolve upon the Secretary of State. In addition to the line of succession to the office and duties of Governor as hereinabove indicated, if the necessity shall arise, in order to fill the vacancy in the office of Governor, the following state officers shall succeed to the duties of Governor and in the order named, viz.: Treasurer, Auditor, Attorney General, Superintendent of Public Instruction and Commissioner of Public Lands. In case of the death, disability, failure or refusal of the person regularly elected to the office of Governor to qualify at the time provided by law, the duties of the office shall devolve upon the person regularly elected to and qualified for the office of Lieutenant Governor, who shall act as Governor until the disability be removed, or a Governor elected; and in case of the death, disability, failure or refusal of both the Governor and the Lieutenant Governor elect to qualify, the duties of the Governor shall devolve upon the Secretary of State; and in addition to the line of succession to the office and duties of Governor as hereinabove indicated, if there shall be the failure or refusal of any officer named above to qualify, and if the necessity shall arise by reason thereof, then in that event in order to fill the vacancy in the office of Governor, the following state officers shall succeed to the duties of Governor in the order named, viz: Treasurer, Auditor, Attorney General, Superintendent of Public Instruction and Commissioner of Public Lands. Any person succeeding to the office of Governor as in this section provided, shall perform the duties of such office only until the disability be removed, or a Governor be elected and qualified; and if a vacancy occur more than thirty days before the next general election occurring within two years after the commencement of the term, a person shall be elected at such election to fill the office of Governor for the remainder of the unexpired term. (Adopted November 1910).

**Remission of Fines—Report of Pardons, Etc.** §11. The governor shall have power to remit fines and forfeitures, under such regulations as may be prescribed by law, and shall report to the legislature at its next meeting each case of reprieve, commutation or pardon granted, and the reasons for granting the same, and also the names of all persons in whose favor remission of fines and forfeitures shall have been made, and the several amounts remitted and the reasons for the remission.

**Veto.** §12. Every act which shall have passed the legislature shall be, before it becomes a law, presented to the governor. If he approves, he shall sign it; but if not, he shall return it, with his objections, to that house in which it shall have originated, which house shall enter the objections at large upon the journal and proceed to reconsider. If, after such reconsideration, two-thirds of the members present shall agree to pass the bill it shall be sent, together with the objections, to the other house, by which it shall likewise be reconsidered, and if approved by two-thirds of the members present, it shall become a law; but in all such cases the vote of both houses shall be determined by the yeas and nays, and the names of the members voting for or against the bill shall be entered upon the journal of each house respectively. If any bill shall not be returned by the governor within five days, Sundays excepted, after it shall be presented to him, it shall become a law without his signature, unless the general adjournment shall prevent its return, in which case it shall become a law unless the governor, within ten days next after the adjournment, Sundays excepted, shall file such bill with his objections thereto, in the office of secretary of state, who shall lay the same before the legislature at its next session in like manner as if it had been returned by the governor. If any bill presented to the governor contain several sections or items, he may object to one or more sections or items while approving other portions of the bill. In such case he shall append to the bill, at the time of signing it, a statement of the section or sections; item or items to which he objects and the reasons therefor, and the section or sections, item or items so objected to, shall not take effect unless passed over the governor's objections, as heretofore provided.



**Governor to Fill Vacancies.** §13. When, during a recess of the legislature, a vacancy shall happen in any office, the appointment to which is vested in the legislature, or when at any time a vacancy shall have occurred in any other state office, for the filling of which vacancy no provision is made elsewhere in this constitution, the governor shall fill such vacancy by appointment, which shall expire when a successor shall have been elected and qualified.

Three county commissioners recalled, nor may fill vacancy, *State v. Smith* 9 W. governor shall appoint two, *State ex rel* 195.  
*Gilbert v. Dimmick* 89 W. 182.

Appointment is to fill unexpired term college appointed but not confirmed is superior to right of board appointed and rejected, *State ex rel. Stearns v. Smith* 9 W. Fish v. Howell 59 W. 492.

If no provision for holding over Governor 195.

**Governor's Salary.** §14. The governor shall receive an annual salary of four thousand dollars, which may be increased by law, but shall never exceed six thousand dollars per annum.

**How Commissions Executed.** §15. All commissions shall issue in the name of the state, shall be signed by the governor, sealed with the seal of the state, and attested by the secretary of state.

**Lieutenant Governor President of the Senate—Salary.** §16. The lieutenant governor shall be presiding officer of the state senate, and shall discharge such other duties as may be prescribed by law. He shall receive an annual salary of one thousand dollars, which may be increased by the legislature, but shall never exceed three thousand dollars per annum.

**Duties of Secretary of State—Salary.** §17. The secretary of state shall keep a record of the official acts of the legislature and the executive department of the state, and shall, when required, lay the same, and all matters relative thereto, before either branch of the legislature, and shall perform such other duties as shall be assigned him by law. He shall receive an annual salary of twenty-five hundred dollars, which may be increased by the legislature, but shall never exceed three thousand dollars per annum.

Secretary of State must attest Governor's pardon, although board of pardons have recommended a commutation only, *State ex rel. Rogers v. Jenkins* 20 W. 78; *State ex rel. Gorham v. Nichols* 40 W. 437.

**Seal of the State.** §18. There shall be a seal of the state, kept by the secretary of state for official purposes, which shall be called, "The Seal of the State of Washington."

Seal provided, Const., art. 28, §1.

**Duties of State Treasurer—Salary.** §19. The treasurer shall perform such duties as shall be prescribed by law. He shall receive an annual salary of two thousand dollars, which may be increased by the legislature, but shall never exceed four thousand dollars per annum.

**Duties of State Auditor—Salary.** §20. The auditor shall be auditor of public accounts, and shall have such powers and perform such duties in connection therewith as may be prescribed by law. He shall receive an annual salary of two thousand dollars, which may be increased by the legislature, but shall never exceed three thousand dollars per annum.

Money paid out on two-year appropriations, Const., art 8, §4.

**Duties of Attorney General—Salary.** §21. The attorney general shall be the legal adviser of the state officers, and shall perform such other duties as may be prescribed by law. He shall receive an annual salary of two thousand dollars, which may be increased by the legislature, but shall never exceed thirty-five hundred dollars per annum.

Is not entitled to fees under territorial law, *State ex rel. Stratton v. Maynard* 35 W. 168. own motion to file information in quo warranto, *State ex rel. Atty. Gen. v. Seattle Gas Co.* 28 W. 488.

Attorney General has no power of his

**Duties of Superintendent of Public Instruction—Salary.** §22. The superintendent of public instruction shall have supervision over all matters pertaining to public schools, and shall perform such specific duties as may be prescribed by law. He shall receive an annual salary of twenty-five hun-

dred dollars, which may be increased by law, but shall never exceed four thousand dollars per annum.

**Duties of Commissioner of Public Lands.** §23. The commissioner of public lands shall perform such duties and receive such compensation as the legislature may direct.

**What Officers Shall Reside and What Records to Be Kept at State Capital.** §24. The governor, secretary of state, treasurer, auditor, superintendent of public instruction, commissioner of public lands and attorney general shall severally keep the public records, books and papers relating to their respective offices, at the seat of government, at which place also the governor, secretary of state, treasurer and auditor shall reside.

**Eligibility to Office—Salary Shall Not Be Changed—Certain Offices May Be Abolished.** §25. No person, except a citizen of the United States and a qualified elector of this State, shall be eligible to hold any state office, and the state treasurer shall be ineligible for the term succeeding that for which he was elected. The compensation for state officers shall not be increased or diminished during the term for which they shall have been elected. The legislature may, in its discretion abolish the offices of lieutenant governor, auditor and commissioner of public lands.

"State officer" defined, *State v. Smith* 6 W. 494.

Candidate who pays for advertising, *State ex rel. Coon v. Hay* 51 W. 576.

## ARTICLE IV.

### THE JUDICIARY.

**Judicial Power Vested.** §1. The judicial power of the state shall be vested in a supreme court, superior courts, justices of the peace and such inferior courts as the legislature may provide.

Judicial power properly vested in law create inferior courts, *In re Cloherty* 2 W. 137.  
examiners but they cannot pronounce judgment, *In re Bruen* 102 W. 472.

Probate decrees same force as any other —fact of death determined in granting letters—failure to establish mortgage, mortgagee volunteer as to other liens paid, *Wagner v. Alderson* 91 W. 157.

Courts cannot exercise legislative functions as creating municipal corporation, *Territory v. State* 1 W. 100.

Power of courts ample regardless of legislation, *In re Cloherty* 2 W. 137.

Power to hear and determine may be conferred in the administration of certain laws, *Bellingham Bay etc. Co. v. New Whatcom* 20 W. 53; *Heath v. McRea* 20 W. 342.

Legislature cannot delegate power to

Justices of the peace are officers and not courts, *State ex rel. Maltby v. Superior Court* 7 W. 223.

Power of the courts over inmates of reform school, *In re Mason* 3 W. 609.

Act of '93, §7820, providing that judge after he is out of office may settle and certify bill of exceptions is invalid, *Hallam v. Tillingham* 19 W. 20.

Laws '91 p 195 does not authorize municipal courts as inferior courts to commit children to State reform school, *In re Barbee* 19 W. 306.

Laws '93 226, empowering city council to determine regularity of a re-assessment, is valid, *Bellingham Bay Imp. Co. v. New Whatcom* 20 W. 53.

**Supreme Court.** §2. The supreme court shall consist of five judges, a majority of whom shall be necessary to form a quorum, and pronounce a decision. The said court shall always be open for the transaction of business except on non-judicial days. In the determination of causes all decisions of the court shall be given in writing and the grounds of the decision shall be stated. The legislature may increase the number of judges of the supreme court from time to time and may provide for separate departments of said court.

Competent for legislature to provide departments—rehearing en banc not a right, *State ex rel. Vanderveer v. Gormley* 53 W. 543.

The number of judges may be temporary

ly increased and the provision of the following sections relating to term does not apply, *State ex rel. Murphy v. McBride* 29 W. 335.

**Supreme Court, Election and Term of Judges—Sessions at Capital.** §3. The judges of the supreme court shall be elected by the qualified electors of the state at large at the general state election at the times and places at which state officers are elected, unless some other time be provided by the



legislature. The first election of judges of the supreme court shall be at the election which shall be held upon the adoption of this constitution and the judges elected thereat shall be classified by lot, so that two shall hold their office for the term of three years, two for the term of five years, and one for the term of seven years. The lot shall be drawn by the judges who shall for that purpose assemble at the seat of government, and they shall cause the result thereof to be certified to the secretary of state, and filed in his office. The judge having the shortest term to serve not holding his office by appointment or election to fill a vacancy, shall be the chief justice, and shall preside at all sessions of the supreme court, and in case there shall be two judges having in like manner the same short term, the other judges of the supreme court shall determine which of them shall be chief justice. In case of the absence of the chief justice, the judge having in like manner the shortest or next shortest term to serve shall preside. After the first election the terms of judges elected shall be six years from and after the second Monday in January next succeeding their election. If a vacancy occur in the office of a judge of the supreme court the governor shall appoint a person to hold the office until the election and qualification of a judge to fill the vacancy, which election shall take place at the next succeeding general election, and the judge so elected shall hold the office for the remainder of the unexpired term. The term of office of the judges of the supreme court, first elected, shall commence as soon as the State shall have been admitted into the Union, and continue for the term herein provided, and until their successors are elected and qualified. The sessions of the supreme court shall be held at the seat of government until otherwise provided by law.

**Supreme Court Jurisdiction.** §4. The supreme court shall have original jurisdiction in habeas corpus, and quo warranto and mandamus as to all state officers, and appellate jurisdiction in all actions and proceedings, excepting that its appellate jurisdiction shall not extend to civil actions at law for the recovery of money or personal property when the original amount in controversy, or the value of the property does not exceed the sum of two hundred dollars (\$200) unless the action involves the legality of a tax, impost, assessment, toll, municipal fine, or the validity of a statute. The supreme court shall also have power to issue writs of mandamus review, prohibition, habeas corpus, certiorari and all other writs necessary and proper to the complete exercise of its appellate and revisory jurisdiction. Each of the judges shall have power to issue writs of habeas corpus to any part of the State upon petition by or on behalf of any person held in actual custody, and may make such writs returnable before himself, or before the supreme court, or before any superior court of the state, or any judge thereof.

Action brought in justice court amended on appeal to jurisdictional amount, held justice's jurisdiction original amount, *Bertles v. Hawkins Motor Car Co.* 94 W. 680.

Compromise of taxes does not involve "legality" to give jurisdiction, *Sylvester v. Franklin County* 90 W. 648.

Other than in exceptions prohibition will not lie to superior court, *State ex rel Prentice v. Superior Court* 86 W. 90.

Habeas corpus by supreme court to admit to bail in civil action, *State ex rel Syverson v. Foster* 84 W. 58.

Does original jurisdiction in mandamus apply only to constitutional officers? *State ex rel Pacific Am. Fisheries Co. v. Darwin* 81 W. 1.

Mandamus will lie from Supreme court to state officers, *Hill v. Howell*, 70 W. 603.

Insurance Commissioner is a "state officer," *State ex rel. North Coast Fire Ins. Co. v. Schively*, 68 W. 148.

Jury trial not necessary—in taxation, *In re Jackson St.*, 62 W. 432.

Whether statute applies to certain state of facts does not involve its "validity," *Sherman v. Eastern & W. Lum. Co.* 56 W. 69.

Prohibition only to restrain judicial acts, *State ex rel. Burnett v. Taylor* 54 W. 150.

Injunction outside appeal cannot be granted, *Vansiclen v. Muir* 44 W. 361.

Overcharge of tax does not involve "legality of tax," *Thomas v. Lincoln County* 41 W. 150.

When other questions in case than validity of statute will be reviewed—minimum wages under ordinance, *Gies v. Broad* 41 W. 448.

Prohibition will not lie to restrain Board of State Land Commissioners from discharging administrative duties, *State ex rel. White v. Board* 23 W. 700.

Right of trial by jury does not exist in quo warranto, *State ex rel. Mullen v. Doherty* 16 W. 382.

Supersedeas from supreme court will

not issue if controversy will have ceased at hearing of appeal, State ex rel. Cawley v. Bremerton 32 W. 508.

Laws '90 p 361 §17 provided that the county superintendent should receive fees for schools visited, the case involving the legality of a statute is appealable, Cox v. Holmes 14 W. 255.

Prohibition will issue against Superior Court when appeal and supersedeas has been perfected, State ex rel. Bank v. Superior Court 12 W. 677.

Writ of review will lie, although there may be remedy by appeal, if such remedy by appeal is not adequate, State ex rel. Smith v. Superior Court 26 W. 278.

Prohibition must be confined to its common law functions and is not extended by §8386 to any other than judicial or quasi judicial officers, Winsor v. Bridges 24 W. 540.

Action to recover for services as attorney in reincorporation of town held not to involve validity of statute, Jacobs v. Puyallup 10 W. 384.

Action for taxes paid by grantee with warranty is not question of legality of tax, Hansen v. Nilson 17 W. 606.

Supreme court has not jurisdiction of disbarment of attorney for fraud in superior court in procuring admission to the bar, In re Waugh 32 W. 50.

The provisions of this section are not self-executing, and must be further defined by statute. Special statute providing for the method of exercise of eminent domain prescribes questions that may be raised upon appeal, Western American Co. v. St. Ann Co. 22 W. 158.

Mandamus will not lie to compel Superior Court to hear appeal from a justice of the peace when there is an appeal from the judgment of the Superior Court, State ex rel. McIntyre v. Superior Court 21 W. 108.

Prohibition by Supreme Court to Superior Court is not restricted to appellate jurisdiction, but may be applied to restrain proceedings by Superior Court in excess of jurisdiction, State v. Superior Court 15 W. 668.

Whether an action is properly brought, whether a recovery can be had, or whether the statute applies, are not questions involving the validity of the statute, *id.*

A member of the board of regents of the agricultural college is not a State officer to give Supreme Court original jurisdiction in mandamus, State ex rel. Stearns v. Smith 6 W. 496.

Order of supersedeas may be issued by Supreme Court pending appeal, State ex rel. Barnard v. Board of Education 19 W. 8.

Superior Courts may enjoin State officers, although Supreme Court has jurisdiction in quo warranto and mandamus, Jones v. Reed 3 W. 57.

Supreme Court will entertain appeal from a void judgment, *id.*

Supreme Court will prohibit Superior Court from proceeding contrary to party's right of appeal, State ex rel. Schloss v. Superior Court 3 W. 696.

Provision for writ of habeas corpus is

self-executing, In re Rafferty 1 W. 382.

Supreme Court will not take original jurisdiction in habeas corpus after denial of the writ by a Superior Court, In re Graham 7 W. 237.

#### Jurisdictional Amount.

Counterclaim frivolous does not confer jurisdiction, Jaklewicz v. Lenhart 86 W. 138.

Complaint alleging damages more than \$200 gives jurisdiction, Johnson v. Pacific Power & L. Co. 90 W. 492.

Claim and interest less than \$200 appeal will be dismissed—pleadings must show amount—proof not allowed, Sherman v. Babcock 92 W. 546.

In replevin value alleged and not amount recovered determines jurisdiction, Donahue v. Hardman Estate 91 W. 125.

Where there is real error case heard when amount less than \$200, Williams v. Lindenberger Packing Co. 86 W. 292.

Jurisdictional amount applies to appeal in certiorari case, Wade v. Weber 82 W. 591.

Action to recover from stockholders of corporation on stock is equitable action and limitation of amount does not apply, Gordon v. Cummings 78 W. 515.

Where several cross-complainants have obtained judgments for individual amounts less than \$200, an appeal must be dismissed as to them, National Surety Co. v. Bratnober Lum. Co., 67 W. 601.

The amount is determined by the averments of the pleadings, not by the demand for judgment, Ingram v. Harper & Son, 71 W. 286.

Affirmed 76 W. 339.

Interest accruing after the commencement of suit cannot be computed to aid of jurisdictional amount, Ingram v. Harper & Son 71 W. 286.

Although, generally, a counterclaim for over \$200, allows appeal by either party, yet where the result is simply to defeat plaintiff's claim, his right to appeal depends on amount in complaint, Gorham-Revere Rubber Co. v. Broadway Auto Co., 71 W.

No jurisdiction in a suit for \$109, though there is a counterclaim for \$105, Nor. Pac. Ry. v. Shoemaker, 69 W. 140.

Superior court is sole judge of its own jurisdiction in cases involving less than \$200, Leites v. Peterson 68 W. 474.

Counterclaim may make jurisdictional amount, Lauridsen v. Lewis 47 W. 594.

Test may be allegations of complaint, Gilbert Co. v. Husted 50 W. 61.

Does not include attorney's fee—court will look into record to determine amount, Fidelity Deposit Co. v. Faben 51 W. 308.

No appeal when complaint amended to reduce amount, Flick v. Showalter 51 W. 345.

Jurisdictional amount, elements, Fidelity and Deposit Co. v. Faben 51 W. 308; counterclaim determines, Sorrill v. McGougan 44 W. 558; evidence where no findings, Gilbert Co. v. Husted 49 W. 61; alimony, temporary, granted pending appeal, Sullivan v. Sullivan 49 W. 508.

Case not appealable when tender reduced amount to less than \$200, Stewart v. Hanna 35 W. 148.

Amount found by court or jury deter-



mines jurisdiction—damages alleged not included, *Graves v. Thompson* 35 W. 282.

Amount held in garnishment not part of jurisdictional amount, *Durk v. Scully* 41 W. 357.

Action for less than two hundred dollars and property attached of the value of more than two hundred dollars, the latter becomes subject of controversy, held, that the case is applicable, *Eidson v. Woolery* 10 W. 225.

Amended complaint reduced amount to less than \$200, held, supreme court had jurisdiction, *Taylor v. Spokane Falls & N. Ry.* 32 W. 450.

Complaint based on statute awarding double damages as a penalty for killing stock by railroad, the plaintiff dismissed as to paragraphs relating to such penalty, reducing amount claimed to less than two hundred dollars, held, not appealable, *Huber v. Brown* 17 W. 4.

Where jurisdictional amount does not appear or action is clearly equitable appeal will not lie—attorneys' fees are not part of amount in controversy, *Durand v. Simpson Logging Co.*, 21 W. 21.

Individual claims in consolidated cause is basis of jurisdictional amount, *Garneau v. Pt. Blakeley Mill Co.* 20 W. 97.

Judgment reduced to less than \$200 subsequent to appeal is not ground of dismissal, *Fenton v. Morgan* 16 W. 30.

Jurisdiction extends only to part of judgment affected where there is not jurisdictional amount, *Henry v. Thurston County* 31 W. 638.

Intervening claimant with claim of less than \$200 may appeal when property in controversy more than \$200, *Goodyear Rubber Co. v. Schreiber* 29 W. 94.

In replevin for goods valued at \$200 and damage \$500 is claimed appeal will lie, *Freeburger v. Caldwell* 5 W. 769.

In action for damages in the sum of two hundred and sixty dollars on an injunction bond plaintiff waived claim for one hundred dollars attorney's fee, held, case not appealable, *Dodge v. Corliss* 28 W. 474.

Fifty plaintiffs were joined in an action, forty-three of which claimed less than two hundred dollars each, held, that an appeal as to the forty-three should be dismissed, *Garneau v. Port Blakeley Mill Co.* 20 W. 197.

Jurisdictional amount depends upon the amount sued for and not upon the judgment rendered, *Trumbull v. School District* 22 W. 631; *Kirby v. Rainier-Grand Hotel* 28 W. 705.

In action for the possession of premises and twenty-four dollars damages subsequent to appeal possession of premises was surrendered, held, that appeal must be dismissed, *Puyallup L. H. & T. Co. v. Stevenson* 21 W. 604.

The court will look to the pleadings rather than the judgment prayed for for jurisdictional amount, *Doty v. Krutz* 13 W. 169.

Allegations of pleading will not be taken for jurisdictional amount, but there must be a finding by the lower court, *Herrin v. Pugh* 9 W. 637; but see *Bleecker v. Satop R. R. Co.* 3 W. 77.

Appeal will not lie in an action for the

recovery of a sum less than two hundred dollars, although the contract provides for more than two hundred dollars, *Lotz v. Mason County* 6 W. 166.

Complaint claiming seven hundred dollars damages, demurrer sustained as to five hundred, case held appealable, *Penter v. State et al.* 1 W. 365.

Where pleadings do not disclose amount due defendant by garnishee finding of court of less than \$200 appeal will be dismissed though principal action is for more than \$200, *Schreiner v. Emil* 26 W. 555.

#### Amount, When Necessary.

Mandamus must have jurisdictional amount, *State ex rel. Lack v. Meads* 49 W. 468.

Equitable action changed into legal as in foreclosure of liens, amount must be present, *Hall v. Cowen* 51 W. 295.

Question of forfeiture of bail in criminal case assumes civil character and jurisdictional amount must appear, *State v. Fisher* 4 W. 382.

Jurisdictional amount must appear in appeal in action for damages for destruction of logs liened, *Tom v. Sayward* 5 W. 383.

If action is for damages for destroying property in loggers' lien, jurisdictional amount must appear, *Chapin v. Kenoyer* 12 W. 536.

Assignment of part of cause of action does not make action equitable and jurisdictional amount must appear, *Barto v. Seattle & I. Ry. Co.* 28 W. 179.

Jurisdictional amount must appear when mandamus is applied for against any other than a State officer, *Id.*

Jurisdictional amount must appear in certiorari, *State ex rel. Hamilton v. Superior Court* 8 W. 271; affirmed, *Warner v. Cowie* 15 W. 696.

#### Amount, When Not Necessary.

Supreme court has jurisdiction of proceedings in nature of mandamus regardless of amount and whether statute is involved, *Spokane v. Smith* 37 W. 583.

Realty actions appealable regardless of amount, *Hamilton v. Witner* 5 W. 689.

Jurisdictional amount does not apply in equity case—nor where it is sought to compel trial court to follow mandate in former appeal, *Johnson v. Josiyn* 47 W. 531.

Appeal lies in case of superadded liability of stockholders regardless of amount, *Bennett v. Torne* 36 W. 253.

Validity of ordinance in question there is appeal regardless of amount, *Shook v. Sexton* 37 W. 509.

Jurisdictional amount need not appear in appeal from garnishment, *Campbell v. Simpkins* 10 W. 160.

Judgment dismissing complaint because of failure to state a cause of action is appealable regardless of amount in controversy, *Griffith v. Maxwell* 20 W. 403.

Action against receiver of bank to recover deposit after insolvency is equity case and jurisdictional amount need not appear, *Blake v. State Savings Bank* 12 W. 619.

Mandamus will lie though amount in-

involved less than two hundred dollars, State ex rel. Dudley v. Daggett 28 W. 1.

Certiorari will be directed by Supreme Court to Superior Court when it has assumed jurisdiction wrongfully, the Superior Court having entertained an appeal from a Justice's Court for more than the justice's jurisdictional amount, and affirmed the judgment, State ex rel. Egbert v. Superior Court 9 W. 369.

Equitable actions are appealable though the amount in controversy does not exceed two hundred dollars, Fox v. Nachtsheim 3 W. 684.

Court is always open and may recall remittitur after term, Gordon v. Hillman 102 W. 411.

Supreme court continued temporary restraining order against the issuance of county bonds, Bier v. Clements 95 W. 505.

Plaintiff suing for more than \$200 recovering less, defendant may appeal, Johnson v. Goodenough 103 W. 625.

Original writ of prohibition will lie to superior judge committing magistrate if criminal case within justice's jurisdiction, State ex Murphy v. Taylor 101 W. 148.

#### Superior Courts—Election of Judges—Sessions—Vacancies. §5.

There shall be in each of the organized counties of this state a superior court for which at least one judge shall be elected by the qualified electors of the county at the general state election: Provided, That until otherwise directed by the legislature one judge only shall be elected for the counties of Spokane and Stevens; one judge for the county of Whitman; one judge for the counties of Lincoln, Okanogan, Douglas and Adams; one judge for the counties of Walla Walla and Franklin; one judge for the counties of Columbia, Garfield and Asotin; one judge for the counties of Kittitas, Yakima and Klickitat; one judge for the counties of Clarke, Skamania, Pacific, Cowlitz and Wahkiakum; one judge for the counties of Thurston, Chehalis, Mason and Lewis; one judge for the county of Pierce; one judge for the county of King; one judge for the counties of Jefferson, Island, Kitsap, San Juan and Clallam; and one judge for the counties of Whatcom, Skagit and Snohomish. In any county where there shall be more than one superior judge, there may be as many sessions of the superior court at the same time as there are judges thereof, and whenever the governor shall direct a superior judge to hold court in any county other than that for which he has been elected, there may be as many sessions of the superior court in said county at the same time as there are judges therein or assigned to duty therein by the governor, and the business of the court shall be so distributed and assigned by law or in the absence of legislation therefor, by such rules and orders of court as shall best promote and secure the convenient and expeditious transaction thereof. The judgments, decrees, orders and proceedings of any session of the superior court held by any one or more of the judges of such court shall be equally effectual as if all the judges of said court presided at such session. The first superior judges elected under this constitution shall hold their offices for the period of three years, and until their successors shall be elected and qualified, and thereafter the term of office of all superior judges in this State shall be for four years from the second Monday in January next succeeding their election and until their successors are elected and qualified. The first election of judges of the superior court shall be at the election held for the adoption of this constitution. If a vacancy occurs in the office of judge of the superior court, the governor shall appoint a person to hold the office until the election and qualification of a judge to fill the vacancy, which election shall be at the next succeeding general election, and the judge so elected shall hold office for the remainder of the unexpired term.

Appointed judge's term expires on qualification of successor, State ex rel. Sears v. Gilliam 93 W. 248.

Governor's appointee held over for failure of notice of election, State ex Sampson v. Court 71 W. 484.

Judicial districts act L '09 82 invalid, State ex rel. Lytle v. Superior Court 54 W. 378.

Act '90, page 346, providing for a different term for Superior judges than that provided by the Constitution held invalid, State ex rel. Dyer v. Twichell 4 W. 715.

A judge of the Superior Court elected to

fill unexpired term takes office when result of election declared, State ex rel. Linn v. Millett 20 W. 221.

Superior judge has no authority to settle statements of facts after his term of office expires, Hallam v. Tillinghast 19 W. 20.

Counties may be grouped by the legislature for judicial purposes, State ex rel. Dustin v. Rusk 15 W. 403.

Distinction between "court" and judge, Gunderson v. Cochran 3 W. 476; Shepard v. Gove 26 W. 452; State ex rel. Romano v. Yakey 43 W. 15.



**Superior Court Jurisdiction.** §6. The superior court shall have original jurisdiction in all cases in equity, and in all cases at law which involve the title or possession of real property, or the legality of any tax, impost, assessment, toll or municipal fine, and in all other cases in which the demand, or the value of the property in controversy amounts to one hundred dollars, and in all criminal cases amounting to felony, and in all cases of misdemeanor not otherwise provided for by law; of actions of forcible entry and detainer; of proceedings in insolvency; of actions to prevent or abate a nuisance; of all matters of probate, of divorce, and for annulment of marriage; and for such special cases and proceedings as are not otherwise provided for. The superior court shall also have original jurisdiction in all cases and of all proceedings in which jurisdiction shall not have been by law vested exclusively in some other court; and said court shall have the power of naturalization, and to issue papers therefor. They shall have such appellate jurisdiction in cases arising in justices and other inferior courts in their respective counties as may be prescribed by law. They shall be always open except on non-judicial days, and their process shall extend to all parts of the state. Said courts and their judges shall have power to issue writs of mandamus, quo warranto, review, certiorari, prohibition, and writs of habeas corpus on petition by or on behalf of any person in actual custody in their respective counties. Injunctions and writs of prohibition and of habeas corpus may be issued and served on legal holidays and non-judicial days.

Superior courts have jurisdiction of torts committed at sea, *State ex rel Jarvis v. Daggett* 87 W. 253.

Superior court has jurisdiction of insane resident or non-resident, *In re Stewart* 85 W. 190.

Superior court has jurisdiction of petition of executor under nonintervention will to construe it, *Bayer v. Bayer* 83 W. 430.

General jurisdiction refers to subjects not to territory—judges are dual state and county officers, salaries paid by either, *In re Salary, etc.*, 82 W. 623.

Probate and other jurisdiction together, *State ex rel Keasal v. Superior Court* 76 W. 291.

Naturalization jurisdiction is under U. S. laws—no appeal to state supreme court, *State ex rel Gorelick v. Superior Court* 75 W. 239.

Jurisdiction broad enough to include local estate of non-resident insane, *In re Sall* 59 W. 539.

Verdict of jury may be received by the court on non-judicial day, *State v. Straub*, 16 W. 111.

Certiorari must be issued by the court and not the clerk, *Leavitt v. Chambers* 16 W. 353.

Simple grant of jurisdiction to a court does not imply that grant is exclusive, *State v. Considine* 16 W. 358.

Jurisdiction is not affected by the character of the decision in the case, *Boston National Bank v. Hammond* 21 W. 158.

Superior Court has jurisdiction of county officers proceeding contrary to law, *Krieschel v. County Commissioners* 12 W. 428.

Appeal from Territorial Justice when amount beyond jurisdiction treated as a transfer of the cause as provided by Const., art. 27, §8, *Moore v. Perrott* 2 W. 1.

Certiorari from Superior Court to a city is the proper method of reviewing street assessments, *Wilson v. Seattle* 2 W. 543.

Prohibition by Supreme Court will not

issue to Superior Courts to restrain the issuance of injunctions in excess of their jurisdiction in cases where there is an appeal, *State ex rel. Reed v. Jones* 2 W. 662.

Superior Courts have no jurisdiction to appoint a receiver for a corporation in quo warranto proceeding by the State, *State v. Superior Court* 15 W. 668.

Superior Courts have concurrent jurisdiction with City Council to determine qualifications of members of the Council, *State ex rel. Blake v. Morris* 14 W. 262.

Jurisdiction of Superior Court does not extend to election contests for city office in the absence of statute, *State ex rel. Fawcett v. Superior Court* 14 W. 604.

Original jurisdiction in prohibition against State Land Commissioner is in Superior Court, *Winsor v. Bridges* 24 W. 540.

Court commissioners have same powers as judges at chambers under Territorial law, *Peterson v. Dillon* 27 W. 78.

Probate jurisdiction is separate from law and equity jurisdiction, *In re Alfstad's Estate* 27 W. 175.

Superior Court has original jurisdiction in mandamus against State officers, *Jones v. Reed* 3 W. 57.

Mandamus from Supreme Court is proper remedy to compel Superior Court to take jurisdiction of cause it has improperly dismissed, *State ex rel. Shannon v. Hunter* 3 W. 92.

Superior Court has concurrent jurisdiction with justice in actions involving less than \$100—mandamus, *State ex rel. Shannon v. Hunter* 3 W. 92.

It seems that officers of county can be enjoined from creating debt in excess of their powers, *Kreischel v. County Commissioners* 12 W. 429.

Justice of the peace has no jurisdiction to abate nuisance but has criminal jurisdiction, *State v. Schaffer* 31 W. 305.

Appeal to Superior Court in road cases is not imposing non-judicial duties, *Senor v. County Commissioners* 13 W. 48.

Judge for two counties may naturalize

allen of K. county in C. county, United districts, State ex rel. Lytle v. Superior States v. Stoller 180 Fed. 910. Court 54 W. 378.

Counties cannot be divided into judicial

**Superior Court—Judge May Hold Sessions in Other Counties—Judge Pro Tempore.** §7. The judge of any superior court may hold a superior court in any county at the request of the judge of the superior court thereof, and upon the request of the governor it shall be his duty to do so. A case in the superior court may be tried by a judge, pro tempore, who must be a member of the bar, agreed upon in writing by the parties litigant, or their attorneys of record, approved by the court and sworn to try the case.

Resident judge may request visiting judge in addition to all resident judges, Holmes 12 W. 169. This section is self-executing, State v. Hindman v. Boyd 42 W. 17.

**When Absence of Judicial Officer Forfeits Office.** §8. Any judicial officer who shall absent himself from the state for more than sixty consecutive days shall be deemed to have forfeited his office; Provided, That in cases of extreme necessity the governor may extend the leave of absence such time as the necessity therefor shall exist.

**Removal of Judges, Attorney General and Prosecuting Attorneys.** §9. Any judge of any court of record, the attorney general, or any prosecuting attorney may be removed from office by joint resolution of the legislature, in which three-fourths of the members elected to each house shall concur, for incompetency, corruption, malfeasance, or delinquency in office, or other sufficient cause stated in such resolution. But no removal shall be made unless the officer complained of shall have been served with a copy of the charges against him as the ground of removal, and shall have an opportunity of being heard in his defense. Such resolution shall be entered at length on the journal of both houses and on the question of removal the ayes and nays shall also be entered on the journal.

**Justices' Courts—Jurisdiction.** §10. The legislature shall determine the number of justices of the peace to be elected in incorporated cities or towns and in precincts, and shall prescribe by law the powers, duties and jurisdiction of justices of the peace: Provided, That such jurisdiction granted by the legislature shall not trench upon the jurisdiction of superior or other courts of record, except that justices of the peace may be made police justices of incorporated cities and towns. In incorporated cities or towns having more than five thousand inhabitants the justices of the peace shall receive such salary as may be provided by law, and shall receive no fees for their own use.

City cannot determine population to comply with statute providing for salaried justice, State ex rel Elwood v. Lovering 78 W. 624.

When constables to be salaried, Const., art 11, §8.

This section is self-executing with reference to the matter of population, and evidence may be taken to determine the population, Anderson v. Whatcom County 15 W. 47.

Justices' salaries can not be based on assessors' census, Rhode v. Seavey 4 W.

91.

Justices of the Peace have no jurisdiction in any sum more than one hundred dollars, Moore v. Perrot 2 W. 1.

Giving justice greater jurisdiction under ordinance than statute does not "trench," State v. Hagamori 57 W. 623.

Jurisdiction of nuisance, State v. Schaffer 31 W. 305.

Salary of justice of city with after-acquired population, Ogden v. Chehalis County 41 W. 45; consolidated city, Whiting v. Collier 9 W. 412.

**Courts of Record.** §11. The supreme court and the superior court shall be courts of record, and the legislature shall have power to provide that any of the courts of this state, excepting justices of the peace, shall be courts of record.

**Jurisdiction of Courts Not Provided For.** §12. The legislature shall prescribe by law the jurisdiction and powers of any of the inferior courts which may be established in pursuance of this constitution.

Only limitation upon the legislature in creating inferior courts is that they be inferior, State ex rel Fugita v. Milroy 71 W. 592.

**Judges Shall Be Salaried—State and Counties Shall Pay Salaries.** §13. No judicial officer, except court commissioners and unsalaried justices of the peace, shall receive to his own use any fees or perquisites of office. The judges of the supreme court and judges of the superior courts shall



severally at stated times, during their continuance in office, receive for their services the salaries prescribed by law therefor, which shall not be increased after their election, nor during the term for which they shall have been elected. The salaries of the judges of the supreme court shall be paid by the state. One-half of the salary of each of the superior court judges shall be paid by the state, and the other one-half by the county or counties for which he is elected. In cases where a judge is provided for more than one county, that portion of his salary which is to be paid by the counties shall be apportioned between or among them according to the assessed value of their taxable property, to be determined by the assessment next preceding the time for which such salary is to be paid.

Counties may be authorized to pay higher salaries, *In re Salary, etc.*, 82 W. 623.

**Salary of Judges.** §14. Each of the judges of the supreme court shall receive an annual salary of four thousand dollars (\$4,000); each of the superior court judges shall receive an annual salary of three thousand dollars (\$3,000), which said salaries shall be payable quarterly. The legislature may increase the salaries of the judges herein provided.

**Judges Shall Not Be Otherwise Employed.** §15. The judges of the supreme court and the judges of the superior court shall be ineligible to any other office or public employment than a judicial office, or employment, during the term for which they shall have been elected.

Judge ineligible to another office though State ex rel Reynolds v. Howell 70 W. 467.  
the term of the other office will not com- Review of administrative function is  
mence till after his term as judge expires, proper duty, *Searor v. Com'rs* 13 W. 48.

**Charges to Juries.** §16. Judges shall not charge juries with respect to matters of fact, nor comment thereon, but shall declare the law.

Witness already discredited court may tion to evidence that he did not consider  
properly examine witness, *State v. Rob- it entitled to much weight is comment,*  
erts 91 W. 560. *Schneider v. Great Nor. R. Co.* 47 W. 45.

Request must be made for instruction on Judge asserting that person did not  
presumption of innocence required by stat- have common sense who would not accept  
ute. *State v. Ross* 85 W. 218. material fact in the case as established  
is comment—not cured, *Spencer v. Ar-*  
*lington* 49 W. 121.

Judge examining witness for defense or Prefacing instruction with remark that  
commenting on facts in criminal case is he did not think it necessary is comment,  
misconduct—no exception necessary, *State *State v. King* 50 W. 312.*  
*v. Jackson* 83 W. 514.

Court suggested calling prosecutor when Remarks addressed to attorneys regard-  
defendant's witness was testifying, held, ing admission of evidence are not com-  
comment. *Eckart v. Peterson* 94 W. 379. ment on the facts, *State v. Mann* 39 W.  
144.

Duty of counsel to request instructions— Judge left bench and stood beside de-  
failure of court is not error, *Hiscock v. fendant asking him questions held com-*  
*Phinney* 81 W. 117. ment on facts, *State v. De Pasquale* 39 W.  
260.

Judge may not single out a witness and Judge stating what evidence was and  
charge the jury upon credibility of mem- that stenographer's notes are wrong is  
bers of his profession, *State v. Miller* 72 W. comment, *State v. Glindeman* 34 W. 221.

154, 174. Stating facts in the direction of verdict  
Judge may not direct filing charge of is not comment, *Lownsdale v. Grays Har-*  
perjury against witness, *State v. Primmer,* bor Boom Co. 36 W. 198.

69 W. 400. Court urged agreement saying it was a  
Court commented on evidence without plain case held a comment on the facts,  
error. *State v. McBride* 72 W. 390. *State v. Thield* 36 W. 365.

Clauses of instruction cannot be segre- Court in colloquy with counsel stated  
gated and held comment on facts. In re facts proven but afterward submitted ques-  
excepted to are not comment, *Peyser v. tion to jury with instructions held not*  
*Westlake Ave., Seattle* 60 W. 549. comment *Cummings v. Weir* 37 W. 42.

Stating legal effect of facts not com- Comment on immaterial facts or with-  
ment, *Cleary v. General Contracting Co.* out prejudice is unobjectionable, *State v.*  
*Remarks addressed to counsel and not *Manderville* 37 W. 365.*  
*Western Dry Goods Co.* 53 W. 633.  
53 W. 254.

Remark by judge that cross-examination Remarks held comment on the facts,  
had gone far enough not comment on the *Patten v. Auburn* 41 W. 644.

Statement that expert witness is quali- Statement of court regarding evidence,  
fied is prohibited comment, *In re Western held, comment, *State v. Priest* 32 W. 74.*  
*Ave., Seattle* 57 W. 290.

Instruction stating evidence is comment, The above section strictly construed,  
*State v. Gohl* 46 W. 408. *State v. Walter* 7 W. 246.

Remark by judge in overruling objec- Instruction in larceny regarding posses-  
tion amended by the court, *State v. Dun-*  
*can* 7 W. 336.

## Art. 4.

It is not error upon a motion for non-suit for the court to comment on the testimony in the presence of the jury, if the party alleging error has not asked that the jury be withdrawn, *Blue v. McCabe* 5 W. 125.

Where the court in a criminal case asks leading question so as to convey to the minds of the jury the court's opinion of the evidence, it is error—no exception necessary, *State v. Crotts* 22 W. 245.

Remarks of the court as to the facts in the case addressed to counsel in the necessary transaction of the business of the court is not error, especially when the jury is cautioned, *State v. Surry*, 23 W. 655.

A wrongful instruction is binding on the jury, *Pepperall v. City Park Transit Co.*, 15 W. 176.

It is error for the court, even if requested by the jury, to state that his notes showed certain testimony, *State v. Hyde* 20 W. 234.

If the evidence is conflicting court may suggest difficulty that more evidence may be introduced, *Miller v. Dumon* 24 W. 648.

Rehearsal of the theory of the plaintiff or defendant in a case is not a comment on the facts, *Binnian v. Jennings* 14 W. 677.

It is error for the court to tell the jury there is no dispute in the testimony on a certain point, or that the fact is conclusively proven, *Bardwell v. Ziegler* 3 W. 34.

The reading of a newspaper by the judge, or undue attention to a witness, during the trial, is error, *State v. Coella* 3 W. 120.

Allusion to facts in determining motion for a non-suit is not error, *Patchen v. Parke & Lacey Machinery Co.* 6 W. 486.

Where references to evidence by the judge do not amount to an explanation or a criticism, nor assume that facts are proven, it is not error, *French v. Seattle Traction Co.* 26 W. 264.

An instruction to the jury that they may consider the relations of the parties and witnesses, their bias, demeanor, etc., is not error, *Klepsch v. Donald* 4 W. 436.

Instruction on law is not comment on facts, *Rattelmiller v. Stone* 28 W. 104.

Remarks by the court are prohibited and prejudice will be presumed, *State v. Wal-*

**Eligibility to Office.** §17. No person shall be eligible to the office of judge of the supreme court, or judge of a superior court, unless he shall have been admitted to practice in the courts of record of this state, or of the Territory of Washington.

Attorney suspended cannot compel his name on ballot for judge, *State ex rel Willis v. Monfort* 93 W. 4.

**Supreme Court Reporter—Salary.** §18. The judges of the supreme court shall appoint a reporter for the decisions of that court, who shall be removable at their pleasure. He shall receive such annual salary as shall be prescribed by law.

**Judges Shall Not Practice Law.** §19. No judge of a court of record shall practice law in any court of this state during his continuance in office.

**When Superior Judge Shall Decide Case.** §20. Every cause submitted to a judge of a superior court for his decision shall be decided by him within ninety days from the submission thereof; Provided, That if, within said period of ninety days a rehearing shall have been ordered, then the period within which he is to decide shall commence at the time the cause is submitted upon such a rehearing.

## Art. 4.

ters, 7 W. 246.

Comments by court on expert witness in answer to objection of attorneys is not error, *State v. Boyce* 24 W. 514.

Court remarked that copy "was admissible for what it was worth" held not a comment, *Nunn v. Jordan* 31 W. 506.

Remarks by court on matters not in issue is not error, *Robertson v. King County* 20 W. 259.

Prejudicial remark may be cured by instruction, *Van Lehn v. Morse* 16 W. 219.

Comments of court on conduct of examination disapproved but not reversible error, *Knox v. Fuller* 23 W. 34.

Exception must be taken to remarks of court in civil case, *Fleischner v. Beaver* 21 W. 6.

Remark by the court on demands of public justice is not error, *State v. Brooks* 4 W. 328.

If court does not criticize evidence nor assume facts as proven it is not comment, *Drumheller v. American Surety Co.* 30 W. 530.

Charge on facts assumed cured by further instruction, *State v. Fenton* 30 W. 325.

Instruction that jury may consider defendant's interest in criminal case or regarding rule as to testifying falsely is proper, *State v. Melvern* 32 W. 7.

Comments not excepted to can not be urged on appeal, *Earles v. Bigelow* 7 W. 581.

Explanation of legal effect of defendant's plea is not comment on facts, *State v. Carter* 15 W. 121.

Court made allusion to facts but charged jury not to take it as court's opinion held not a comment on the facts, *Anderson v. McDonald* 31 W. 274.

Instruction on different theories of criminal case is not comment on facts, *State v. Mitchell* 32 W. 64.

Statement of court that good character of defendant is not a "convincing matter," held not a comment on the facts, *State v. Newton* 29 W. 373.

Instruction as to class of witnesses and character of evidence is error, *State v. Smith* 103 W. 267.

"If you are trying to hide something from this jury" is comment, *State v. Money-maker* 100 W. 463.

name on ballot for judge, *State ex rel Willis v. Monfort* 93 W. 4.

§18. The judges of the su-

preme court shall appoint a reporter for the decisions of that court, who shall be removable at their pleasure. He shall receive such annual salary

as shall be prescribed by law.

§19. No judge of a court of

record shall practice law in any court of this state during his continuance in

office.

§20. Every cause sub-

mitted to a judge of a superior court for his decision shall be decided by him

within ninety days from the submission thereof; Provided, That if, within

said period of ninety days a rehearing shall have been ordered, then the

period within which he is to decide shall commence at the time the cause is

submitted upon such a rehearing.



Court failing to decide in ninety days does not lose jurisdiction, *Olympic Oil Co. v. Kane* 56 W. 199. Entry of judgment months after trial valid, *West Philadelphia etc. Co. v. Olympia* 19 W. 150.

Judgment not void nor reversible error, *Moylan v. Moylan* 49 W. 341. Court does not lose jurisdiction after 90 days, *DeMaris v. Barker* 33 W. 200.

**Publication of Supreme Court Decisions.** §21. The legislature shall provide for the speedy publication of opinions of the supreme court, and all opinions shall be free for publication by any person.

**Clerk of the Supreme Court—Salary.** §22. The judges of the supreme court shall appoint a clerk of that court who shall be removable at their pleasure, but the legislature may provide for the election of the clerk of the supreme court, and prescribe the term of his office. The clerk of the supreme court shall receive such compensation by salary only as shall be provided by law.

**Court Commissioners, Superior Court.** §23. There may be appointed in each county, by the judge of the superior court having jurisdiction therein, one or more court commissioners, not exceeding three in number, who shall have authority to perform like duties as a judge of the superior court at chambers, subject to revision by such judge, to take depositions and to perform such other business connected with the administration of justice as may be prescribed by law.

**Mandamus will lie to prevent capricious reduction by county commissioners of court commissioner's salary,** *State ex rel Yeargin v. Maschke* 90 W. 249. Appointment when no resident judge, *Howard v. Hansen* 49 W. 314. Court commissioners have power of territorial judges at chambers, *Peterson v. Dillon*, 27 W. 78.

Power in criminal cases, *State v. Phillip* 44 W. 615.

**Superior Court Rules.** §24. The judges of the superior courts shall, from time to time, establish uniform rules for the government of the superior courts.

Rules cannot contravene statutes, *Warburton v. Ralph* 9 W. 537; rule is not a law, *Nichols v. Griffin* 1 W. T. 374; rules may be suspended, *Washington Bank v. Horn* 24 W. 299.

**Reports of All Judges on the Laws.** §25. Superior judges, shall on or before the first day of November in each year, report in writing to the judges of the supreme court such defects and omissions in the laws as their experience may suggest, and the judges of the supreme court shall on or before the first day of January in each year report in writing to the governor such defects and omissions in the laws as they may believe to exist.

**Clerk of the Superior Court.** §26. The county clerk shall be by virtue of his office, clerk of the superior court.

**Style of Process.** §27. The style of all process shall be, "The State of Washington," and all prosecutions shall be conducted in its name and by its authority. *State v. Symes* 20 W. 484.

In misdemeanors other styles of process may be provided, *State v. Fountain* 14 W. 236. Prosecutions for the violation of municipal ordinances may be prosecuted in the name of the city, *Seattle v. Chin* Let 19

Void warrant may be given in evidence, W. 38.

**Oath of Judges.** §28. Every judge of the supreme court, and every judge of the superior court shall, before entering upon the duties of his office, take and subscribe an oath that he will support the Constitution of the United States and the Constitution of the State of Washington, and will faithfully and impartially discharge the duties of judge to the best of his ability, which oath shall be filed in the office of the secretary of state.

## ARTICLE V.

### IMPEACHMENT.

**Power of and Trial of Impeachments.** §1. The house of representatives shall have the sole power of impeachment. The concurrence of a majority of all the members shall be necessary to an impeachment. All impeachments shall be tried by the senate, and, when sitting for that purpose, the senators shall be upon oath or affirmation to do justice according

to law and evidence. When the governor or lieutenant governor is on trial, the chief justice of the supreme court shall preside. No person shall be convicted without a concurrence of two-thirds of the senators elected.

Removal of certain officers by resolution of legislature. Const., art. 4, §9.

**What Officers Liable to Impeachment—Judgment.** §2. The governor and other state and judicial officers, except judges and justices of courts not of record, shall be liable to impeachment for high crimes or misdemeanors, or malfeasance in office, but judgment in such cases shall extend only to removal from office and disqualification to hold any office of honor, trust or profit, in the state. The party, whether convicted or acquitted, shall, nevertheless, be liable to prosecution, trial, judgment and punishment according to law.

State officers liable to impeachment under this section, *State ex rel. Stearns v. Smith* 6 W. 496.

**Removal From Office.** §3. All officers not liable to impeachment shall be subject to removal for misconduct or malfeasance in office, in such manner as may be provided by law.

Elected justice appointed police justice cannot be removed by mayor, *State ex rel. Evans v. Superior Court* 92 W. 375.

Arid land commissioner subject to removal, *State ex rel. Howlett v. Cheetham* 19 W. 330.

Has no application to recall provision in city charter, *Hilzinger v. Gillman* 56 W. 228.

State capitol commissioner liable to removal without a hearing *State ex rel. McReavy v. Burke* 8 W. 412.

## ARTICLE VI.

### ELECTIONS AND ELECTIVE RIGHTS.

**Qualifications of Voters.** §1. All persons of the age of twenty-one years or over, possessing the following qualifications, shall be entitled to vote at all elections: They shall be citizens of the United States; they shall have lived in the state one year, and in the county ninety days, and in the city, town, ward or precinct thirty days immediately preceding the election at which they offer to vote; they shall be able to read and speak the English language: Provided, That Indians not taxed shall never be allowed the elective franchise: And further provided, That this amendment shall not affect the rights of franchise of any person who is now a qualified elector of this state. The legislative authority shall enact laws defining the manner of ascertaining the qualifications of voters as to their ability to read and speak the English language, and providing for punishment of persons voting or registering in violation of the provision of this section. There shall be no denial of the elective franchise at any election on account of sex. (Adopted November 1910, Former amendment November 1896).

Proficiency required in English—votes deducted, *Hill v. Howell*, 70 W. 603.

section subject to reasonable regulation, *Stallcup v. Tacoma* 13 W. 141.

Returns and contest state officers, Const., art 3, §4.

Women may hold office of county school superintendent, *Russell v. Guptill* 13 W.

Law directing votes thrown out for reasons not the fault of voter invalid, *Mover v. Van de Vanter* 12 W. 377.

360.

Women may vote at school elections for an increase of indebtedness, *Holmes &*

Citizen has right of voting under this *Bull Furniture Co. v. Hedges* 13 W. 696.

**Persons Disqualified.** §3. All idiots, insane persons, and persons convicted of infamous crime unless restored to their civil rights are excluded from the elective franchise.

Infamous crime under the laws of this state, *State v. Collins*, 69 W. 268.

registering must allege loss of his right to vote in the state where convicted, *State v. Collins*, 69 W. 268.

An information for false swearing in reg-

**Residence.** §4. For the purpose of voting and eligibility to office no person shall be deemed to have gained a residence by reason of his presence or lost it by reason of his absence, while in the civil or military service of the state or of the United States, nor while a student at any institution of learning, nor while kept at public expense at any poor house or other asylum, nor while confined in public prison, nor while engaged in the navigation of the waters of this state or of the United States, or of the high seas.



**Art. 7.**

**Voters Privileged.** §5. Voters shall in all cases except treason, felony, and breach of the peace be privileged from arrest during their attendance at elections, and in going to and returning therefrom. No elector shall be required to do military duty on the day of any election except in time of war or public danger.

**Elections by Ballot—Secrecy.** §6. All elections shall be by ballot. The legislature shall provide for such method of voting as will secure to every elector absolute secrecy in preparing and depositing his ballot.

Voting machines do not violate section, —parties not protected, State ex rel. State ex rel Empire Voting Machine Co. v. Shepard v. Superior Court 60 W. 370. Carroll 78 W. 83.

Irregularities at an election will not defeat the superior right of citizens to vote, Moyer v. Van de Vanter 12 W. 377.

Right to vote subject to reasonable regulation by legislature—candidate on ballot in more than one place—judges names

**Registration.** §7. The legislature shall enact a registration law, shall require a compliance with such law before any elector shall be allowed to vote: Provided, That this provision is not compulsory upon the legislature except as to cities and towns having a population of over five hundred inhabitants. In all other cases the legislature may or may not require registration as a pre-requisite to the right to vote, and the same system of registration need not be adopted for both classes.

Reasonable regulations may be required of voters, Stallcup v. Tacoma 13 W. 140.

**Time of Elections.** §8. The first election of county and district officers not otherwise provided for in this constitution shall be on the Tuesday next after the first Monday in November, 1890, and thereafter all elections for such officers shall be held biennially on the Tuesday next succeeding the first Monday in November. The first election of all state officers not otherwise provided for in this constitution, after the election held for the adoption of this constitution, shall be on the Tuesday next after the first Monday in November, 1892, and the elections for such state officers shall be held in every fourth year thereafter on the Tuesday succeeding the first Monday in November.

Taxes delinquent 20 years are not asset —loans to solvent special funds not a liability—warrants not specifying funds are not liability, Seymour v. Ellensburg 81 W. 365

Justices and constables not county officers, terms of four years valid, State ex rel Fair v. Hamilton 92 W. 347.

Legislature may provide for commissioners' districts and terms of office, State ex rel. Hays v. Twichell 9 W. 530.

Affirmed, State ex rel Gowan v. Superior Court 81 W. 18.

The terms of office for county officers is for two years commencing on the second Monday of January next succeeding their election, McMurray v. Hollis 5 W. 458.

Superior judges are State officers, State ex rel. Dyer v. Twichell 4 W. 715.

## ARTICLE VII.

## REVENUE AND TAXATION.

**Property Subject—Levy Shall Be Made.** §1. All property in the state, not exempt under the laws of the United States, or under this constitution, shall be taxed in proportion to its value, to be ascertained as provided by law. The legislature shall provide by law for an annual tax sufficient, with other sources of revenue to defray the estimated ordinary expenses of the state for each fiscal year. And for the purpose of paying the state debt, if there be any, the legislature shall provide for levying a tax annually, sufficient to pay the annual interest and principal of such debt within twenty years from the final passage of the law creating the debt.

Legislature can not tax municipality for municipal purposes, Const., art. 11, §12.

Non-residents not to be taxed at higher rate than citizens, Const., art. 26.

Indians owning lands in severalty to be taxed unless exempted by grant, Const., art 26.

Taxation is exclusive method of taking private property for public debt., Const., art 11, §13.

State tax shall not be remitted in any

form, Const., art 11, §9.

Special acts prohibited, Const., art. 2, §28.

Act providing for assessment at 50 per cent valid—exemption must be actual value, State ex rel Board Tax Com'rs v. Cameron 90 W. 407.

Basis of valuation of mortgaged realty belonging to bank, Scandinavian Am. Bank v. Pierce County 85 W. 348.

Assessment of railroads at higher valua-

tion constructive fraud, *Spokane v. I. E. R. Co. v. Spokane County* 82 W. 24.

Court reporter act does not violate State ex rel *Lindsey v. Derbyshire* 79 W. 227.

Uniformity does not apply to poll tax hence L '05 297 valid, *Thurston County v. Tenino Stone Quarries* 44 W. 351.

This section does not require a uniform method of assessment, but that the rate and method of valuation shall be uniform,

*Pacific National Bank v. Pierce County*, 20 W. 674.

License tax on auctioneers held valid, *Stull v. De Mattos* 23 W. 70.

National Banks required to make exhibits of shareholders by mandamus, *Paul v. McGraw* 3 W. 296.

Franchises are taxable as personal property, *Commercial Electric L. & P. Co. v. Judson* 21 W. 49.

### **'Assessment—Deduction of Debts—Exemption of Personalty. §2.**

The legislature shall provide by law a uniform and equal rate of assessment and taxation on all property in the state, according to its value in money, and shall prescribe such regulations by general law as shall secure a just valuation for taxation of all property, so that every person and corporation shall pay a tax in proportion to the value of his, her, or its property: Provided, That a deduction of debts from credits may be authorized: Provided, further, That the property of the United States and of the state, counties, school districts and other municipal corporations, and such other property as the legislature may by general laws provide, shall be exempt from taxation; And provided further, That the legislature shall have power, by appropriate legislation, to exempt personal property to the amount of three hundred (\$300.00) dollars for each head of a family liable to assessment and taxation under the provisions of the laws of this state of which the individual is the actual and bona fide owner. (Last proviso adopted November, 1900.)

Act, L. '17, ch. 3, requiring Pierce county to levy tax in aid of U. S. army post, valid, *State ex Comr's v. Clausen* 95 W. 214.

§6935 and §5619 provide the same standard of value and are valid, *Spokane & I. E. R. Co. v. Spokane County* 75 W. 72.

Section does not regulate inspection, etc. fees, *Standard Oil Co. v. Graves* 94 W. 291.

Automobile in city lighting department subject to automobile license tax, *State v. Collins* 94 W. 310.

Uniformity does not apply to occupation license fee imposed by city, *Seattle v. King* 74 W. 277.

Statute exempting ships in foreign, etc., trade invalid, *Pacific Cold S. Co. v. Pierce County* 85 W. 626.

Act, L. '13, p. 351, exempting property of Y. M. C. A. invalid, *Y. M. C. A. v. Parish* 89 W. 495.

It is a violation of Const. Art. 2, §7, to assess all property save bank stock on a 40 per cent valuation, and to assess bank stock on a 60 per cent valuation, *Spokane Trust Co. v. Spokane County*, 70 W. 48.

Exempt where title vests before levy, *State v. Snohomish County* 71 W. 320.

§6885 exempting "moneys" is pro tanto invalid—deduction of debts from credits, *State ex rel. Wolfe v. Parmeter* 50 W. 164.

School district lots liable for local assessments, *In re Howard Ave. No. 44 W. 62.*

Statute exempting "hospitals" strictly construed, and does not include grounds for proper occupancy, *Thurston County v. Sisters of Charity* 14 W. 264.

Person holding executory contract on State land must pay taxes on such land, *Washington Iron Works Co. v. King Coun-*

*ty* 20 W. 150.

Banks are not entitled to deduct from their capital stock the stock of other corporations, although such stock is taxed in this State, *Pacific National Bank v. Pierce County* 20 W. 675.

Set of abstract books are personal property and liable to taxation, *Booth & Hanford Abstract Co. v. Phelps* 8 W. 548.

This section does not require uniformity in expenditure of funds, *State ex rel. Olmstead v. Mudgett* 21 W. 99.

Method of assessment and valuation of mining property as provided by statute sustained, *Eureka District Gold Mining Company v. Ferry County*, 28 W. 250.

Bank stocks are credits within this section, *Pullman State Bank v. Manring* 18 W. 250.

A revenue act that discriminates between State and national bank stock is valid, *id.*

National bank stocks are credits, from which indebtedness may be deducted, *Newport v. Mudgett* 18 W. 271.

Legislature may provide for collection of city taxes by county officers, *State ex rel. Seattle v. Carson* 6 W. 250.

Exemption of personal property provided by Laws '97 p 139 §5, is invalid, *State ex rel. Chamberlin v. Daniel* 17 W. 111.

The provision of a statute requiring a greater payment on the part of persons delinquent than on others delinquent is valid, *State ex rel. Savings Union v. Whitlesey* 17 W. 450.

Inequality of assessment may be shown in a proceeding to foreclose delinquent taxes, *Whatcom County v. Fairhaven Land Co.* 7 W. 101.

**Taxation of Corporations. §3.** The legislature shall provide by general law for the assessing and levying of taxes on all corporation property as near as may be by the same methods as are provided for the assessing and levying of taxes on individual property.

Act §7069 for assessment of railroads valid, *Northern Pac. R. Co.* 84 W. 510



Method of valuation of mining property \$6935 is valid, *Eureka Co. v. Ferry County* 28 W. 250.

**Power Shall Not Be Surrendered.** §4. The power to tax corporations and corporate property shall not be surrendered or suspended by any contract or grant to which the state shall be a party.

City can make binding covenant respecting streets, etc., not in prohibited subjects, *Pacific T. & T. Co. v. Everett* 97 W. 259.

**Measure of Power to Tax.** §5. No tax shall be levied except in pursuance of law; and every law imposing a tax shall state distinctly the object of the same to which only it shall be applied.

Peddlers' license is not tax act requiring use of proceeds for specific purpose, *State v. Sheppard* 79 W. 328.

Section does not regulate inspection, etc., fees, *Standard Oil Co. v. Graves* 94 W. 291.

There is no limitation on levy of tax by counties to pay past debts, *Mason v. Purdy* 11 W. 591.

Moneys raised for a particular purpose can not be diverted, *Sheldon v. Purdy* 17 W. 135.

City cannot divert funds on the ground of necessity, *Eidemiller v. Tacoma* 14 W.

**Tax: Payable in Money.** §6. All taxes levied and collected for state purposes shall be paid in money only into the state treasury.

This section applies only to the State, and not a state fund to be deposited as such, *State ex Sherman v. Pape* 103 W. 319.

Fund collected by fire warden a trust

**Annual Statement.** §7. An accurate statement of the receipts and expenditures of the public moneys shall be published annually in such manner as the legislature may provide.

**Deficiencies May Be Supplied.** §8. Whenever the expenses of any fiscal year shall exceed the income, the legislature may provide for levying a tax for the ensuing fiscal year, sufficient, with other sources of income, to pay the deficiency, as well as the estimated expenses of the ensuing fiscal year.

**Power of Cities and Towns.** §9. The legislature may vest the corporate authorities of cities, towns and villages with power to make local improvements by special assessment, or by special taxation of property benefited. For all corporate purposes, all municipal corporations may be vested with authority to assess and collect taxes and such taxes shall be uniform in respect to persons and property within the jurisdiction of the body levying the same.

Does not preclude state authority diking districts to make local improvements, *Foster v. Comr's Cowlitz County* 100 W. 502.

Lighting system proper subject of local assessment, *Ankeny v. Spokane* 92 W. 549.

General benefits cannot be assessed benefits and damages must relate to property, *In re Shilshole Avenue* 85 W. 522.

Special benefits a judicial question, *In re Shilshole Ave.* 94 W. 583.

Assessment for local improvements cannot exceed benefits, *In re Eighth Ave. N.* 77 W. 570.

Cited 77 W. 205.

Section is limitation on cities not counties, *Bilger v. State*, 63 W. 457.

General levy on all the property of assessment district invalid, *Monk v. Ballard* 42 W. 35.

Poll tax in city valid, *Tekoa v. Reilly* 47 W. 202.

Water system chargeable as a local improvement and when so charged is not to

be accounted in 5 per cent limit, *Smith v. Seattle* 25 W. 300.

Legislature may provide that county officers shall collect tax, *State ex rel. Seattle v. Carson* 6 W. 250.

City council may determine regularity of assessment, *Bellingham Bay Imp. Co. v. New Whatcom* 20 W. 53.

State may authorize improvements upon its own property within cities, *Mississippi Valley Trust Co. v. Hofius* 20 W. 272.

Local improvement bonds which make city primarily liable requires assent of three-fifths vote, *Austin v. Seattle* 2 W. 667.

Charging the indebtedness of the former cities after consolidation to the limits of such former cities is valid, *De Mattos v. New Whatcom* 4 W. 126.

may be organized, *Hansen v. Hammer* 15

Dyking districts with power of taxation W. 315.

## ARTICLE VIII.

### STATE, COUNTY AND MUNICIPAL INDEBTEDNESS.

**Limit on State Debt. §1.** The state may to meet casual deficits or failures in revenues, or for expenses not provided for, contract debts, but such debts, direct and contingent, singly or in the aggregate, shall not at any time exceed four hundred thousand dollars (\$400,000), and the moneys arising from the loans creating such debts shall be applied to the purpose for which they were obtained or to repay the debts so contracted, and to no other purpose whatever.

Act of '95 p 462 creating State board of finance with power to raise limit of State debt, invalid, State ex rel. Jones v. McGraw 12 W. 541. Warrants is not an increase of indebtedness, State ex rel. Winston v. Rogers 21 W. 206. The limitation prescribed does not apply to expenses of the agencies of government made mandatory by the Constitution,

Issuance of State bonds for sale to the permanent school fund the proceeds to be paid into the general fund to pay war-

**When Limit Does Not Apply. §2.** In addition to the above limited power to contract debts the state may contract debts to repel invasion, suppress insurrection, or to defend the state in war, but the money arising from the contracting of such debts shall be applied to the purpose for which it was raised and to no other purpose whatever.

Capitol buildings are not within this section, State Capitol Com'n. v. Board, 74 W. 15.

**Further Debt by Election for Specific Object. §3.** Except the debts specified in sections one and two of this article, no debts shall hereafter be contracted by, or on behalf of this state, unless such debt shall be authorized by law for some single work or object to be distinctly specified therein, which law shall provide ways and means, exclusive of loans, for the payment of the interest on such debt as it falls due, and also to pay and discharge the principal of such debt within twenty years from the time of the contracting thereof. No such law shall take effect until it shall, at a general election, have been submitted to the people and have received a majority of all the votes cast for and against it at such election, and all moneys raised by authority of such law shall be applied only to the specific object therein stated, or to the payment of the debt thereby created, and such law shall be published in at least one newspaper in each county, if one be published therein, throughout the state, for three months next preceding the election at which it is submitted to the people.

Act L. '15, p. 700, §3, providing for capitol bonds and guarantee of interest by general tax levy invalid, State ex rel State Capitol Com. v. Lister 91 W. 9.

**Money Paid Out Only on Appropriations for Two Years. §4.** No moneys shall ever be paid out of the treasury of this state, or any of its funds, or any of the funds under its management, except in pursuance of an appropriation by law; nor unless such payment be made within two years from the first day of May next after the passage of such appropriation act, and every such law making new appropriation, or continuing or reviving an appropriation, shall distinctly specify the sum appropriated, and the object to which it is to be applied, and it shall not be sufficient for such law to refer to any other law to fix such sum.

Warrants for state condemnation awards without appropriation, State ex rel. Peel v. Clausen 94 W. 166. A certain sum is an appropriation, State ex rel. Brainerd v. Grimes 7 W. 191.

Appropriations must be made of special funds, State ex rel. Pub. Co. v. Lindsley 3 W. 125; State ex rel. Atty. Gen. v. McGraw 13 W. 311. An appropriation need not specify the amount appropriated, Birmingham v. Cheatham 19 W. 657. Fund collected by fire warden a trust and not a state fund, State ex Sherman v. Pape 103 W. 319.

Act authorizing the expenditure of a cer-

**State's Credit Shall Not Be Loaned. §5.** The credit of the State shall not, in any manner be given or loaned to, or in aid of, any individual, association, company or corporation.

**Limit of County and Municipal Indebtedness. §6.** No county, city, town, school district or other municipal corporation, shall for any purpose become indebted in any manner to an amount exceeding one and one-half per centum of the taxable property in such county, city, town, school district or other municipal corporation, without the assent of three-fifths of the voters therein, voting at an election to be held for that purpose, nor in



cases requiring such assent shall the total indebtedness at any time exceed five per centum on the value of the taxable property therein, to be ascertained by the last assessment for state, and county purposes previous to the incurring of such indebtedness: except that in incorporated cities the assessment shall be taken from the last assessment for city purposes: Provided, That no part of the indebtedness allowed in this section, shall be incurred for any purpose other than strictly county, city, town, school district, or other municipal purposes. Provided further; That any city or town, with such assent may be allowed to become indebted to a larger amount but not exceeding five per centum additional for supplying such city or town with water, artificial light, and sewers, when the works for supplying such water, light, and sewers shall be owned and controlled by the municipality.

Full valuation not assessed valuation of taxable property is meant, *Hansen v. Hoquiam* 95 W. 132

All taxing districts limited to assessed valuation \$5400.

Assessment by city council for city purposes is basis for debt limit, *In re Town of Woolley* 75 W. 206.

"Light and power" bonds classified as light bonds when primary object is to light—city may sell light and power—may maintain separate plants, *Chandler v. Seattle* 80 W. 154.

All powers may be exercised to the limit of each and on the highest assessment, *State ex rel Olympia v. Holmes* 81 W. 403; *State ex rel Clallam County v. Clausen* 82 W. 137.

Special incurred without regard to general indebtedness, *Schooley v. Chehalis* 84 W. 667.

Does not apply to obligations which are mandatory by constitution and laws, but building docks, installing lights, etc., are not ordinarily mandatory *Patterson v. Edmonds* 72 W. 88.

Indebtedness incurred in the necessary conduct of a city's ordinary affairs is not limited, *Pilling v. Everett*, 67 W. 109.

Several objects at same election must be segregated, *Blaine v. Seattle*, 62 W. 445.

Funding bonds are increase of indebtedness, *State ex rel. Atkinson v. Ross* 43 W. 290.

Majority means of voters voting on proposition, *Fox v. Seattle* 43 W. 74.

General fund may be transferred to special fund, *Griffin v. Tacoma* 49 W. 525.

Bonds payable out of revenues of water system not in limitation—purchase of water works in five per cent limit, *Dean v. Walla Walla* 48 W. 75.

Indebtedness is of two classes, and indebtedness by vote may exceed that not voted, and yet a city may incur indebtedness without vote, *Hazeltine v. Blake* 26 W. 231, *Graham v. Spokane* 19 W. 447.

Indebtedness by vote will not be presumed a charge as an indebtedness without vote when such presumption would render subsequent obligations of the city illegal, *State ex rel. Strahorn v. Blake* 26 W. 237.

Valuation for the purpose of limiting indebtedness shall be taken at the time of the election, *Seymour v. Tacoma* 6 W. 427.

Where municipal bonds are payable out of special taxes cash in the general fund cannot be deducted in computing debt limit, *Id.*

Valuation of property in county com-

plete when fixed by State board of equalization, *Hunt v. Fawcett* 8 W. 396.

Proceeds of debt voted cannot be applied to payment of indebtedness not voted, *Id.*

Cities may become indebted five per cent for special purposes in addition to the five per cent for general purposes, *Metcalf v. Seattle* 1 W. 297.

Three-fifths vote means three-fifths of persons voting on debt, *Strain v. Young* 25 W. 578.

Debt authorized by vote certain powers respecting issuance and sale of bonds may be granted city officers, *Yesler v. Seattle* 1 W. 318.

Cash on hand and uncollected taxes may be computed in determining indebtedness, *Graham v. Spokane* 19 W. 447.

Cash on hand and delinquent taxes are assets in estimating limit of debt, *State ex rel. Barton v. Hopkins* 14 W. 59.

Indebtedness within five per cent limit may be validated regardless of valuation at validating election, *West v. Chehalis* 12 W. 369.

A charge payable out of receipts of water works is not a municipal indebtedness, *Winston v. Spokane* 12 W. 524.

Water etc debt is not part of general debt, *Austin v. Seattle* 2 W. 667.

Limitation of county or city indebtedness does not include expenses of agencies of government made mandatory by the constitution, *Rauch v. Chapman* 16 W. 568; *Hull v. Ames* 26 W. 272.

This section is not prohibition on local assessments, *Smith v. Seattle* 25 W. 300.

Validity of debt as to limit is based on valuation at time contract was made, *State Savings Bank v. Davis* 22 W. 406; *Childs v. Anacortes* 5 W. 452.

Valuation may be determined by county assessment roll of property in city, *Childs v. Anacortes* 5 W. 452.

Condemnation for Lake Washington canal is a county purpose, *Lancey v. King County* 15 W. 9.

Repayment of money to purchaser under void tax sale is not incurring debt, *Phelps v. Tacoma* 15 W. 367.

Debt limit included territorial debt of county, *Rehmke v. Goodwin* 2 W. 676.

Debt limit does not apply to irrigation districts, *Board of Directors v. Peterson* 4 W. 147.

Provisions are self-executing and elections may be held by school districts under general law, *Holmes & Bull Furniture Co. v. Hedges* 13 W. 696.

When debt limit reached school district cannot be compelled to maintain school, *Stanley v. McGeorge* 17 W. 8.

Debt beyond limit for necessary corporate expenses is valid, *Gladwin v. Ames* 30 W. 608.

City cannot exceed debt limit for street improvements, *German-Am. Bank v. Spokane* 17 W. 315.

When bonds are to be applied in part to payment of existing debt it will be presumed that issue is within debt limit, *Luzader v. Sargeant* 4 W. 299.

Valuation must be first ascertained valuation at time debt incurred is basis,

*Childs v. Anacortes* 5 W. 453.

If election is had debt authorized is not to be accounted part of 1½% limit, *State ex rel. Barton v. Hopkins* 14 W. 59.

Court will take judicial notice that all taxes are not collected, *Mullin v. Sackett* 14 W. 100.

Court and county officers will not be prohibited from empanelling jury though debt limit passed, *Clifford v. Parker* 13 W. 518.

**Credit of County or Municipality Shall Not Be Loaned.** §7. No county, city, town or other municipal corporation shall hereafter give any money, or property, or loan its money, or credit to or in aid of any individual, association, company or corporation, except for the necessary support of the poor and infirm, or become directly or indirectly the owner of any stock in or bonds of any association, company or corporation.

Diking district not included in prohibited "associations," etc., *Foster v. Comr's Cow-litz County* 100 W. 502.

County bonds for interstate bridge built with county of another state valid, *Rands v. Clarke County* 79 W. 152.

Act, L. '03, p. 363, to encourage county fairs, etc., invalid as loan, etc., *Johns v. Wadsworth* 80 W. 352.

Does not apply to city annexing territory, *Fisher v. Seattle* 55 W. 396.

School districts are included, *State v. Grimes* 7 W. 270; irrigation districts are not, *Directors v. Peterson* 4 W. 147; county cannot issue bonds to aid U. S. canal, *State ex rel. Potter v. King County* 45 W. 519.

Does not include the State or the United States, *Lancey v. King County* 15 W. 9.

Contract providing for refund to city by contractor is invalid, *Moran v. Thompson* 20 W. 525.

## ARTICLE IX.

### EDUCATION.

**State's Duty to Provide for Education of Children.** §1. It is the paramount duty of the state to make ample provision for the education of all children residing within its borders, without distinction or preference on account of race, color, caste, or sex.

School districts are municipal corporations, *State ex rel. School District v. Grimes*, 7 W. 271; *Maxon v. School District No. 34*, 5 W. 142.

**System of Schools—Revenues Not to Be Diverted.** §2. The legislature shall provide for a general and uniform system of public schools. The public school system shall include common schools, and such high schools, normal schools, and technical schools as may hereafter be established. But the entire revenue derived from the common school fund and the state tax for common schools shall be exclusively applied to the support of the common schools.

Act providing tuition fees at university valid, *Litchman v. Shannon* 90 W. 186.

Different system for cities valid, *Holmes etc. Co. v. Hedges* 13 W. 696.

Model training department normal schools not a part of system and act authorizing apportionment of funds to, void, *School District v. Bryan* 51 W. 498.

**Permanent School Fund—Current Fund.** §3. The principal of the common school fund shall remain permanent and irreducible. The said fund shall be derived from the following named sources, to-wit: Appropriations and donations by the state to this fund; donations and bequests by individuals to the state or public for common schools; the proceeds of lands and other property which revert to the state by escheat and forfeiture; the proceeds of all property granted to the state, when the purpose of the grant is not specified, or is uncertain; funds accumulated in the treasury of the state for the disbursement of which provision has not been made by law; the proceeds of the sale of timber, stone, minerals, or other property from school and state lands, other than those granted for specific purposes; all moneys received from persons appropriating timber, stone, minerals or other property from school and state lands other than those granted for specific purposes, and all moneys other than rental recovered from persons trespassing on said lands; five per centum of the proceeds of the sale of public



lands lying within the state, which shall be sold by the United States subsequent to the admission of the state into the Union as approved by section 13 of the act of Congress enabling the admission of the State into the Union; the principal of all funds arising from the sale of lands and other property which have been, and hereafter may be granted to the state for the support of common schools. The legislature may make further provisions for enlarging said fund. The interest accruing on said fund together with all rentals and other revenues derived therefrom and from lands and other property devoted to the common school fund shall be exclusively applied to the current use of the common schools.

Permanent and current fund, tax levy, manent fund and Laws 1895 p 5 for erection of buildings invalid, State ex rel. etc. §5101.

Proceeds of normal school lands is per- Heuston v. Maynard 31 W. 132.

**Public Schools Free From Sectarian Control.** §4. All schools maintained or supported wholly or in part by the public funds shall be forever free from sectarian control or influence.

Giving of credits for bible study outside school violates provision, State ex Dearle v. Frazier 102 W. 369.

**Losses to Any Educational Fund.** §5. All losses to the permanent common school or any other state educational fund, which shall be occasioned by defalcation, mismanagement or fraud of the agents or officers controlling or managing the same, shall be audited by the proper authorities of the state. The amount so audited shall be a permanent funded debt against the state in favor of the particular fund sustaining such loss, upon which not less than six per cent. annual interest shall be paid. The amount of liability so created shall not be counted as a part of the indebtedness authorized and limited elsewhere in this constitution.

## ARTICLE X.

### MILITIA.

**Citizens Liable to Military Duty.** §1. All able-bodied male citizens of this state between the ages of eighteen (18) and forty-five (45) years except such as are exempt by laws of the United States or by the laws of this state, shall be liable to military duty.

Governor is commander in chief, Const., art 3, §8.

**Militia Shall Be Organized—Appointment of Officers—Governor May Order Out.** §2. The legislature shall provide by law for organizing and disciplining the militia in such manner as it may deem expedient, not incompatible with the constitution and laws of the United States. Officers of the militia shall be elected or appointed in such manner as the legislature shall from time to time direct and shall be commissioned by the governor. The governor shall have power to call forth the militia to execute the laws of the state to suppress insurrections and repel invasions.

Governor is not required to observe any in calling out militia, Chapin v. Ferry 3 antecedent formalities required by statute W. 386.

**Soldiers' Home.** §3. The legislature shall provide by law for the maintenance of a soldiers' home for honorably discharged Union soldiers, sailors, marines and members of the state militia disabled while in the line of duty and who are bona fide citizens of the state.

**Arms Shall Be Safely Kept.** §4. The legislature shall provide by law, for the protection and safe keeping of the public arms.

**Militia Privileged.** §5. The militia shall, in all cases, except treason, felony and breach of the peace, be privileged from arrest during the attendance at musters and elections of officers, and in going to and returning from the same.

**Scruples Against Bearing Arms.** §6. No person or persons, having conscientious scruples against bearing arms, shall be compelled to do militia duty in time of peace: Provided, Such person or persons shall pay an equivalent for such exemption.

## ARTICLE XI.

## COUNTY, CITY AND TOWNSHIP ORGANIZATION.

**Existing Counties Recognized.** §1. The several counties of the Territory of Washington existing at the time of the adoption of this constitution are hereby recognized as legal subdivisions of this state.

Credit shall not be loaned nor stock art 2, §28.

purchased, Const., art. 8, §7.

Special acts incorporating or amending charter prohibited, Const., art 2, §28.

Special acts changing county lines or locating county seats prohibited, Const.,

Debt limit, Const., art 8, §6.

A county is a municipal corporation and an agency of the state, State ex rel. Sum-merfield v. Tyler 14 W. 494; Lincoln Coun-ty v. Brook 37 W. 14.

**Removal of County Seats.** §2. No county seat shall be removed unless three-fifths of the qualified electors of the county, voting on the proposition at a general election shall vote in favor of such removal, and three-fifths of all votes cast on the proposition shall be required to relocate a county seat. A proposition of removal shall not be submitted in the same county more than once in four years.

Removal is a political question—no in-junction for fraud in election, Parmeter v. Bourne 8 W. 45.

Remedy for wrongful removal, Rickey v. Williams 8 W. 479.

Counting the vote—appeal, Heffner v. Comr's 16 W. 273; Lawry v. Comr's 12

W. 446.

Commissioners may declare result of election, but will be enjoined if declared contrary to law, Kreischel v. County Com-missioners 12 W. 428.

Injunction will not be granted on ground of fraud in election 8 W. 45.

**Limit on Division of Counties—Liability for Debts.** §3. No new county shall be established which shall reduce any county to a population less than four thousand (4,000), nor shall a new county be formed containing a less population than two thousand (2,000). There shall be no territory stricken from any county unless a majority of the voters living in such territory shall petition therefor and then only under such other conditions as may be prescribed by a general law applicable to the whole state. Every county which shall be enlarged or created from territory taken from any other county or counties shall be liable for a just proportion of the existing debts and liabilities of the county or counties from which such territory shall be taken: Provided, That in such accounting neither county shall be charged with any debt or liability then existing incurred in the purchase of any county property, or in the purchase or construction of any county buildings then in use, or under construction, which shall fall within and be retained by the county: Provided further, That this shall not be construed to affect the rights of creditors.

County cannot be divided into judicial districts, State ex rel. Chehalis districts, State ex rel. Lytle v. Superior Court 47 W. 453. Court 54 W. 378.

Presumption of population does not ob-tain if legislature directs census—proce-

County created will be presumed to have necessary population, Farquharson v. Year-gin 24 W. 549.

**System of County and Township Government Shall Be Estab-lished.** §4. The legislature shall establish a system of county government which shall be uniform throughout the state, and by general laws shall provide for township organization, under which any county may organize whenever a majority of the qualified electors of such county voting at a general election shall so determine, and whenever a county shall adopt township organization the assessment and collection of the revenue shall be made and the business of such county, and the local affairs of the several town-ships therein shall be managed and transacted in the manner prescribed by such general laws.

Act, L. '13, p. 165, abolishing coroners in all counties except first class, invalid, State ex rel. Maulsby v. Fleming 88 W. 583.

Majority of electors required, State ex rel. Milliken v. Comr's 49 W. 70.

Townships liable for injuries on roads, Nipges v. Mountain View Twp. 100 W. 268.

Townships liable for injuries on roads, Orrock v. South Moran Twp. 97 W. 144.

**County Officers Shall Be Provided and Held Accountable.** §5. The legislature by general and uniform laws shall provide for the election in the several counties of boards of county commissioners, sheriffs, county clerks, treasurers, prosecuting attorneys, and other county, township or pre-



inct and district officers as public convenience may require, and shall prescribe their duties, and fix their term of office. It shall regulate the compensation of all such officers, in proportion to their duties, and for that purpose may classify the counties by population. And it shall provide for the strict accountability of such officers for all fees which may be collected by them, and for all public moneys which may be paid to them, or officially come into their possession.

Ten per cent party regulations valid—provision regulates elections only, State ex rel Rogers v. Howell 92 W. 381.

Officers provided in game code, 1913, state and not county officers, act valid, State ex rel Lopas v. Shagren 91 W. 48.

County commissioners are not county officers when equalizing local assessments, Bilger v. State, 63 W. 457.

Salaried county clerks must turn over half of naturalization fees allowed by federal law, Franklin County v. Barnes 68 W. 488.

First election, Const., art 27, §7, term begins Const., art. 27, §14.

Legislature may provide for "successor" by holding over if officer elect refuses to qualify, State ex rel. Vanderveer v. Gormley 53 W. 543.

Eminent domain commissioners not required to be elected, In re Blewett Street, Seattle 59 W. 485.

County fruit inspector act invalid, Egbert v. Blumberg 46 W. 270.

County treasurer is liable for money de-

**County Commissioners Shall Fill Vacancies.** §6. The board of county commissioners in each county shall fill all vacancies occurring in any county, township, precinct or road district office of such county by appointment, and officers thus appointed shall hold office till the next general election, and until their successors are elected and qualified.

All three commissioners vacant, governor shall appoint two, State ex rel Gilbert v. Dimmick 89 W. 182.

Applies to county commissioners, State ex rel. Pendergast v. Fulton 37 W. 271.

Vacancies in justice's office are filled by

**County Officers Eligible to Only Two Terms.** §7. No county officer shall be eligible to hold his office more than two terms in succession.

Appointee may serve two succeeding ify, Koontz v. Kurtzman 12 W. 59; Smal-terms, Koontz v. Kurtzman 12 W. 59.

Filling unexpired term does not disqual-

**Compensation of County Officers and Constables in Cities—Salary and Term Shall Not Be Changed.** §8. The legislature shall fix the compensation by salaries of all county officers, and of constables in cities having a population of 5,000 and upwards; except that public administrators, surveyors and coroners may or may not be salaried officers. The salary of any county, city, town, or municipal officer shall not be increased or diminished after his election, or during his term of office; nor shall the term of any such officer be extended beyond the period for which he is elected or appointed.

Garnishment is not diminution of salary, Hanson v. Hodge 92 W. 425.

Officer entitled to salary of class at time of election though afterwards determined—cannot be changed—mandamus for salary, State ex rel. Maltbie v. Will 54 W. 453.

County engineer act invalid, State ex rel. Funke v. Comr's 48 W. 461.

Act '90 p 361 § 17 prescribing fees for county school superintendent invalid, Cox v. Holmes 14 W. 255.

Officers can not be deprived of salary

posited in banks, Fairchild v. Hedges 14 W. 117.

This section does not preclude statutory provisions for deputies, Nelson v. Troy 11 W. 435.

County commissioners shall declare advance of counties on Federal census, State ex rel. Smith v. Neal 25 W. 264.

Prosecuting attorneys are county officers and vacancies are to be filled by commissioners, State ex rel. McMartin v. Whitney 9 W. 377.

Legislature may provide for election and terms of commissioners, State ex rel. Hays v. Twichell 9 W. 530.

Statute may extend term of county officer, State ex rel. Meredith v. Tallman 24 W. 426.

On creation of new county statute may provide appointment of commissioners by the Governor, Farquharson v. Yeargin 24 W. 549.

Road overseer can not be divested of office by change in district, State ex rel. O'Connell v. Nilson 7 W. 114.

appointment, State ex rel. Moody v. Cronin 5 W. 398.

Vacancies in prosecuting attorney's office filled by commissioners, State ex rel. McMartin v. Whitney 9 W. 377.

dith v. Tallman 24 W. 426.

coming from incidental duties of his office, Mudgett v. Lucas 14 W. 482.

Witness fees may be allowed a policeman, State v. Saillard 22 W. 267.

Shortening term of office is not diminishing salary, Bogue v. Seattle 19 W. 396.

Applies to treasurer city of the third class, Ballard v. Keene 13 W. 201.

Prosecuting attorney can not be allowed fees in delinquent tax cases, Spokane County v. Allen 9 W. 229.

City Council can not vote themselves additional pay, Tacoma v. Lillis 4 W. 797.

**All Municipalities and Persons Shall Pay State Tax.** §9. No county, nor the inhabitants thereof, nor the property therein, shall be released or discharged from its or their proportionate share of taxes to be levied for state purposes, nor shall commutation for such taxes be authorized in any form whatever.

Act, L. '17, ch. 3, requiring Pierce county to levy tax in aid of U. S. army post. valid  
State ex Comr's v. Clausen 95 W. 214.

**Incorporation of Cities and Towns.** §10. Corporations for municipal purposes shall not be created by special laws; but the legislature, by general laws, shall provide for the incorporation, organization and classification in proportion to population, of cities and towns, which laws may be altered, amended or repealed. Cities and towns heretofore organized, or incorporated may become organized under such general laws whenever a majority of the electors voting at a general election, shall so determine, and shall organize in conformity therewith; and cities or towns heretofore or hereafter organized, and all charters thereof framed or adopted by authority of this constitution shall be subject to, and controlled by general laws. Any city containing a population of twenty thousand inhabitants, or more, shall be permitted to frame a charter for its own government, consistent with and subject to the constitution and laws of this state, and for such purpose the legislative authority of such city may cause an election to be had at which election there shall be chosen by the qualified electors of said city, fifteen freeholders thereof, who shall have been residents of said city for a period of at least two years preceding their election and qualified electors, whose duty it shall be to convene within ten days after their election and prepare and propose a charter for such city. Such proposed charter shall be submitted to the qualified electors of said city, and if a majority of such qualified electors voting thereon ratify the same, it shall become the charter of said city, and shall become the organic law thereof, and supersede any existing charter including amendments thereto, and all special laws inconsistent with such charter. Said proposed charter shall be published in two daily newspapers published in said city, for at least thirty days prior to the day of submitting the same to the electors for their approval, as above provided. All elections in this section authorized shall only be had upon notice, which notice shall specify the object of calling such election, and shall be given for at least ten days before the day of election, in all election districts of said city. Said elections may be general or special elections, and except as herein provided shall be governed by the law regulating and controlling general or special elections in said city. Such charter may be amended by proposals therefor submitted by the legislative authority of such city to the electors thereof at any general election after notice of said submission published as above specified, and ratified by a majority of the qualified electors voting thereon. In submitting any such charter, or amendment thereto, any alternate article or proposition may be presented for the choice of the voters, and may be voted on separately without prejudice to others.

Other methods of amendment may be adopted, State ex Hindley v. Court, 70 W. 352.

Const. Art 11 §10 permits mandamus to compel initiative election, State ex rel. Hindley v. Court, 70 W. 357.

Reserves general legislative power to state, State ex Webster v. Court, 67 W. 37.

Commission form of government is classification—election, State ex Hunt v. Tausick, 64 W. 69.

City can prescribe minimum wage in special assessment street improvements, Malette v. Spokane 77 W. 205.

Referendum not an unlawful delegation of legislative power, Hindman v. Boyd 42 W. 17.

City plans commission composed in part of non-residents with only advisory powers

valid, Bussell v. Gill, 58 W. 468.

City of first class may provide recall provisions in charter under §679, Hilzinger v. Gillman 56 W. 228.

City may adopt direct legislation charter provision, Hartig v. Seattle 53 W. 432.

Unreasonable charter limitation against claims for damages invalid, Hase v. Seattle 51 W. 174.

Charters cities of first class subject to general laws, Burton v. S. E. Co. 50 W. 156; amendments by vote valid. State ex rel. Mullen v. Doherty 16 W. 382.

A delegation of powers to city will not be presumed unless powers necessary, Tacoma Gas & Electric Co. v. Tacoma 14 W. 288.

Charter of city of the first class can not



cover subject covered by statute, nor amplify the statute, *Id.*

Charter of city of the first class can not provide for trial of contest election cases, *State ex rey. Fawcett v. Superior Court* 14 W. 604; *State ex rel. Navin v. Weir* 26 W. 501.

Special municipal powers granted by Territory not repealed by general statute by state on same subject, *Tacoma Land Co. v. Pierce County* 1 W. 482.

Cities can not create courts, *In re Cloherty* 2 W. 137.

The various acts of 1890 were general and uniform in their operation and valid, *Baker v. Seattle* 2 W. 576.

Cities of the first class may organize under general law or may frame charters and must exercise authority under the law of its organization, *Seymour v. Tacoma* 6 W. 138.

Legislature may supersede charter provisions by general laws, *State ex rel. Seattle v. Chin Let* 19 W. 38.

Statute authorizing consolidation is valid and applies to all cities, including Territorial cities, *State ex rel. Cole v. New Whatcom* 3 W. 7.

Amendments proposed to charter must be published for 30 days, *Wade v. Tacoma* 4 W. 85.

Majority means majority voting on subject, although charter may be ambiguous, *State ex rel. Weisenthal v. Denny* 4 W. 135.

City limits can not be extended by amendment of charter, but must proceed

under statute, *State ex rel. Snell v. Warner* 4 W. 773.

City ordinance may exceed minimum but can not exceed maximum penalty, *Seattle v. Chin Let* 19 W. 38.

Noncompliance with statute regarding notice of election will not invalidate election, *State ex rel. Mullen v. Doherty* 16 W. 382.

City of first class may frame new charter, *Reeves v. Anderson* 13 W. 17.

Provisions of the charter of the city of Seattle relating to the filing of claims before an action can be maintained are valid, *Scurry v. Seattle* 8 W. 278.

The validity of a municipal corporation can not be questioned in an ordinary action or collaterally, *Ferguson v. Snohomish* 8 W. 668.

At the time of re-incorporation additional territory may be added by the election for re-incorporation, and such territory may consist of agricultural land, *Id.*

Legislature can not authorize re-incorporation of cities incorporated under invalid law, and Laws '90 p 135 §6 is invalid, *Town of Denver v. Spokane Falls* 7 W. 226; but such cities may be reincorporated under the general law, *In re Campbell* 1 W. 287.

Under the general power of a city over subjects authorized by statute charter amendments may cover the same subject and supersede territorial laws upon that subject, *Seattle v. Clark* 28 W. 717.

Cited 75 W. 651.

Cited, 244 U. S. 579.

### Municipality May Make Laws Not in Conflict with General Laws.

§11. Any county, city, town or township may make and enforce within its limits all such local police, sanitary and other regulations as are not in conflict with general laws.

Cities may regulate jitneys in addition to statute, *Allen v. Bellingham* 95 W. 12.

City's power ceases when state acts, hence street car regulations of city superseded, *Seattle Electric Co. v. Seattle* 78 W. 203.

City ordinance may prohibit theatres opening on Sunday, though state repealed such a law, *In re Ferguson* 80 W. 102.

Is delegation of police power—grade separation required by city—bridges over streets—method in discretion—construction of bridges, *Detamore v. Hindley* 83 W. 322.

Later general laws supersede charters, *Ewing v. Seattle* 55 W. 229.

City may regulate frequency of street

car service under §678, *Tacoma v. Eou-telle* 61 W. 434.

Proper subjects of city regulation: stock at large, *Wilson v. Beyers* 5 W. 303; bicycles, *Simpson v. Whatcom* 33 W. 392; fire escapes, *Seattle v. Hinckly* 40 W. 468; automobiles, *Bellingham v. Cissna* 44 W. 397; liquor licenses *Seattle v. Clark* 28 W. 717; eight hour day, *In re Broad* 36 W. 449; minimum wages, *Gies v. Broad* 41 W. 448.

The legislature having acted upon a subject, cities can not amplify such legislation, *Tacoma Gas & Electric Co. v. Tacoma* 14 W. 288.

Cited 75 W. 651.

Local Taxation Only by Local Authorities. §12. The legislature shall have no power to impose taxes upon counties, cities, towns or other municipal corporations, or upon the inhabitants or property thereof, for county, city, town, or other municipal purposes, but may, by general laws, vest in the corporate authorities thereof, the power to assess and collect taxes for such purposes.

Act, L. '17, ch. 3. requiring Pierce county to levy tax in aid of U. S. army post, valid, *State ex Comr's v. Clausen* 95 W. 214.

Validating tax is not imposing tax, *Owings v. Olympia* 88 W. 289.

Adding lands to diking district taxing by benefits, valid, *State ex rel Conner v. Superior Court*, 81 W. 480.

Local assessments by county is not tax

by state, *Bilger v. State*, 63 W. 457.

Assessments, no vested rights in manner of, *Helling v. Puyallup* 7 W. 29; power to collect penalty on taxes, *New Whatcom v. Roeder* 22 W. 570.

Tax law for city valid, *Germond v. Tacoma* 6 W. 369; *State ex rel. Seattle v. Abrahams* 6 W. 372; *Pierce County v. Spike* 19 W. 652.

Laws authorizing cities to extend their

credit, *Baker v. Seattle* 2 W. 576.

Persons may be taxed, *State v. Ide* 35 W. 576.

Does not apply to expense required in submission of referendum charter amendment, *Hindman v. Boyd* 42 W. 17.

Legislature may provide for the collection of taxes by local authorities, *State ex rel. Seattle v. Carson* 6 W. 250.

Legislature may authorize holders of

bonds for local improvements to enforce collection, *Germond v. Tacoma* 6 W. 365.

Assessment for local improvement is not a tax within this section, *Seonor v. County Commissioners* 13 W. 48.

Local authorities not having the power to impose "penalty" and "interest" under the above section collections from that source belong to the county, *New Whatcom v. Roeder* 22 W. 570.

**Private Property Not to Be Taken for Public Debt.** §13. Private property shall not be taken or sold for the payment of the corporate debt of any public or municipal corporation, except in the mode provided by law for the levy and collection of taxes.

**Making Profit Out of Public Money a Felony.** §14. The making of profit out of county, city, town, or other public money, or using the same for any purpose not authorized by law, by any officer having the possession or control thereof, shall be a felony, and shall be prosecuted and punished as prescribed by law.

Deposit on demand not a loan, *Bardsley Krug* 12 W. 295.  
v. *Sternberg* 18 W. 612.

This section and statute includes officers prohibited by this section, *Bardsley v. holding by virtue of city charter. State v. Sternberg* 18 W. 612.

**Officers Shall Pay Over Funds.** §15. All moneys, assessments and taxes belonging to or collected for the use of any county, city, town or other public or municipal corporation, coming into the hands of any officer thereof, shall immediately be deposited with the treasurer, or other legal depositary to the credit of such city, town, or other corporation respectively, for the benefit of the funds to which they belong.

## ARTICLE XII.

### CORPORATIONS OTHER THAN MUNICIPAL.

**Private Corporations—Laws May Be Changed.** §1. Corporations may be formed under general laws, but shall not be created by special acts. All laws relating to corporations may be altered, amended or repealed by the legislature at any time, and all corporations doing business in this state may, as to such business, be regulated, limited or restrained by law.  
Powers by special act prohibited, Const., art. 2, §28; irrevocable franchises, Const., art. 1, §8.

**Existing Charters Not Acted Upon of No Force.** §2. All existing charters, franchises, special or exclusive privileges, under which an actual and bona fide organization shall not have taken place, and business been commenced in good faith, at the time of the adoption of this constitution shall thereafter have no validity.

**Charters Shall Not Be Extended.** §3. The legislature shall not extend any franchise or charter, nor remit the forfeiture of any franchise or charter of any corporation now existing, or which shall hereafter exist under the laws of this state.

Act, §4652, providing for reinstatement by payment of fees etc. is valid, *State ex Preston Mill Co. v. Howell*, 67 W. 377.

**Liability of Stockholders.** §4. Each stockholder in all incorporated companies, except corporations organized for banking or insurance purposes, shall be liable for the debts of the corporation to the amount of his unpaid stock and no more; and one or more stockholders may be joined as parties defendant in suits to recover upon this liability.

Surplus fund an additional asset but does not relieve liability on stock, *Johns v. Clothier* 78 W. 602. Const. Art. 12 §4, coal mine stockholders liable—other mining stocks, *Davies v. Ball*, 64, W. 292.

**"Corporation" Defined—Action By and Against.** §5. The term corporations, as used in this article, shall be construed to include all associations and joint stock companies having any powers or privileges of corporations not possessed by individuals or partnerships, and all corporations shall have the right to sue and shall be subject to be sued, in all courts, in like cases as natural persons.



**Limitation on Issuance of Stock and Bonds—Changing Capital Stock.** §6. Corporations shall not issue stock, except to bona fide subscribers therefor, or their assignees; nor shall any corporation issue any bond, or other obligation, for the payment of money, except for money or property received or labor done. The stock of corporations shall not be increased, except in pursuance of a general law, nor shall any law authorize the increase of stock, without the consent of the person or persons holding the larger amount in value of the stock, nor without due notice of the proposed increase having been previously given in such manner as may be prescribed by law. All fictitious increase of stock or indebtedness shall be void.

Stock sold at 7 cents on the dollar is fictitious and void, *Fox v. Seattle Contact Copper Co.* 98 W. 557.

Bonds issued as collateral invalid, *Chavalle v. Washington Tr. Co.* 226 Fed. 400.

Bond by corporation for dividend equal to stock subscribed makes subscription fictitious, *Jorguson v. Apex Gold Mines Co.* 74 W. 243.

**Foreign Corporations.** §7. No corporation organized outside the limits of this state shall be allowed to transact business within the state on more favorable conditions than are prescribed by law to similar corporations organized under the laws of this state.

Foreign corporations may sue though requirements not same as this state, *Maine N. W. Dev. Co. v. Northwestern Com'l Co.* 228 Fed. 791.

Express companies subject to legislative control, etc., *State v. Northern Express Co.*, 76 W. 636, 80 id. 309.

Foreign insurance company required to make same deposit as domestic companies *State ex rel Leach v. Fishback* 79 W. 290.

Foreign company with trust powers Must comply with trust companies act, §290, *State ex rel Amalgamated, etc., Co. v. Nichols* 47 W. 117.

**Burdens Follow Franchise on Alienation.** §8. No corporation shall lease or alienate any franchise, so as to relieve the franchise, or property held thereunder, from the liabilities of the lessor, or grantor, lessee, or grantee, contracted or incurred in the operation, use, or enjoyment of such franchise or any of its privileges.

Liability of grantee for damage by tunnel of grantor, *Seattle v. Great Nor. Ry. Co.* 239 Fed. 1009.

Involuntary sale of franchise under mortgage valid, *State ex rel. Tacoma v. Sun-*

*set T. & T. Co.*, 86 W. 309.

Transfer by insolvent corporation of all of its property to mortgagee is valid *Klosterman v. Mason Co. R. R. Co.* 8 W. 281.

**State Shall Not Loan Its Credit.** §9. The state shall not in any manner loan its credit, nor shall it subscribe to, or be interested in the stock of any company, association or corporation.

State shall not loan its credit § 149.

State shall not loan its credit, Const., art. 8, §5.

**Corporate Property Liable to Eminent Domain by the State.** §10. The exercise of the right of eminent domain shall never be so abridged or construed as to prevent the legislature from taking the property and franchise of incorporated companies, and subjecting them to public use the same as the property of individuals.

Eminent domain generally, Const., art. 1, §16.

**Corporations Shall Not Issue Money—Liability of Stockholders in Bank.** §11. No corporation, association, or individual shall issue or put in circulation as money anything but the lawful money of the United States. Each stockholder of any banking or insurance corporation or joint stock association, shall be individually and personally liable equally and ratably, and not one for another, for all contracts, debts and engagements of such corporation or association accruing while they remain such stockholders to the extent of the amount of their stock therein at the par value thereof, in addition to the amount invested in such shares.

Liability attaches on insolvency, and it is not necessary to exhaust assets—limitation begins to run—levy of assessment not necessary before action, *Bennett v. Thorne* 36 W. 253.

Superadded liability of stockholder in bank will be enforced by the courts, *Shuey v. Adair* 24 W. 378.

Amount collected on superadded liability of stockholders will be applied on claims

of bank creditors where bank does a mixed business, *Kiggins v. Munday* 19 W. 233.

Creditors of bank can not proceed directly against stockholder on superadded liability which liability is secondary, *Wilson v. Book* 13 W. 676.

Stockholder is liable only for debts incurred while a stockholder, *Shuey v. Holmes* 21 W. 223.

Receiver may enforce liability—order of

Superior Court directing assessment is binding on foreign stockholders, *Haworth v. Ellwanger* 86 Fed. Rep. 54.

One not a stockholder at time debt incurred is not liable but defense must be made, *Shuey v. Holmes* 21 W. 223.

**Personal Liability of Bank Officer for Deposit if Bank Insolvent.**

§12. Any president, director, manager, cashier, or other officer of any banking institution, who shall receive or assent to the reception of deposits, after he shall have knowledge of the fact that such banking institution is insolvent or in failing circumstances, shall be individually responsible for such deposits so received.

Officer of bank made criminally liable, *State v. Oleson* 35 W. 149.

Provision is self-executing and liability is not an asset for receiver, but is for benefit of depositors directly, *Mallon v. Hyde*, 76 Fed Rep. 388.

Deposit if identity lost is not recoverable in full from assets of bank, *Blake v. State Savings Bank* 12 W. 619.

**Common Carriers Subject to Legislative Control—Carriers Shall Connect and Exchange Passengers and Freight.**

§13. All railroad, canal and other transportation companies are declared to be common carriers and subject to legislative control. Any association or corporation organized for the purpose, under the laws of this state, shall have the right to connect at the state line with railroads of other states. Every railroad company shall have the right with its road, whether the same is now constructed or may hereafter be constructed, to intersect, cross or connect with any other railroad, and when such railroads are of the same or similar gauge they shall at all crossings and at all points, where a railroad shall begin or terminate at or near any other railroad, form proper connections so that the cars of any such railroad companies may be speedily transferred from one railroad to another. All railroad companies shall receive and transport each the other's passengers, tonnage and cars without delay or discrimination.

Express companies subject to legislative control and can renounce intrastate business—privilege tax not void, *State v. Northern Express Co.* 80 W. 309, 81 W. 701; overruling *id.* 76 W. 636.

condemnation, *State ex rel. Spokane F. & N. R. Co. v. Superior Court* 40 W. 389. Railroad crossing another should attempt to agree with road crossed before exercising eminent domain, *Seattle Etc. Ry. v. State* 7 W. 150.

Right of crossing and re-crossing, *Seattle & Montana R. Co. v. State* 7 W. 150;

**Pooling Prohibited.** §14. No railroad company, or other common carrier shall combine or make any contract with the owners of any vessel that leaves port or makes port in this state, or with any common carrier, by which combination or contract the earnings of one doing the carrying are to be shared by the other not doing the carrying.

**Discrimination Prohibited—Short Haul—Commutation Tickets.**

§15. No discrimination in charges or facilities for transportation shall be made by any railroad or other transportation company between places or persons, or in the facilities for the transportation of the same classes of freight or passengers within this state, or coming from or going to any other state. Persons and property transported over any railroad, or by any other transportation company, or individual, shall be delivered at any station, landing or port, at charges not exceeding the charges for the transportation of persons and property of the same class, in the same direction, to any more distant station, port or landing. Excursion and commutation tickets may be issued at special rates.

Cited, 103 W. 72.

Requiring submission of claims for overcharges to public service commission valid, *Hewitt Logging Co. v. Nor. Pac. R. Co.* 97 W. 597.

This section not self-executing and discrimination must be defined, *Northwestern Warehouse Co. v. Oregon Ry. & Nav. Co.* 32 W. 218.

**Competing Railroads Shall Not Consolidate.** §16. No railroad corporation shall consolidate its stock, property or franchises with any other railroad corporation owning a competing line.

Individual cannot object to violation, it being the state's duty to take wise action, *Day v. Tacoma R. & P. Co.* 80 W. 161.

Competing lines may together build road into new territory, *State ex rel. Cascade R. Co. v. Superior Court* 51 W. 346.

**Rolling Stock Personalty.** §17. The rolling stock and other movable property belonging to any railroad company or corporation in this



state, shall be considered personal property, and shall be liable to taxation and to execution and sale in the same manner as the personal property of individuals and such property shall not be exempted from execution and sale.

**Railroad Rates—Commission.** §18. The legislature shall pass laws establishing reasonable maximum rates of charges for the transportation of passengers and freight, and to correct abuses and to prevent discrimination and extortion in the rates of freight and passenger tariffs on the different railroads and other common carriers in the state, and shall enforce such laws by adequate penalties. A railroad and transportation commission may be established and its powers and duties fully defined by law.

Franchise or contract does not foreclose state's police power—part of street railway system not paying—requiring interchange of traffic. Puget Sound Tr., L. & P. Co. v. Reynolds 244 U. S. 574.

Includes power to regulate telephone companies, State ex rel. Webster v. Court, 67 W. 37.

Rate making power delegated to commission—rates supersede former law, State ex rel. Great N. R. Co. v. Com'n 52 W. 33.

**Telephone Companies May Construct Lines—Exchange of Messages—Eminent Domain.** §19. Any association or corporation, or the lessees or managers thereof, organized for the purpose, or any individual, shall have the right to construct and maintain lines of telegraph and telephone within this state, and said companies shall receive and transmit each other's messages without delay or discrimination and all of such companies are hereby declared to be common carriers and subject to legislative control. Railroad corporations organized or doing business in this state shall allow telegraph and telephone corporations and companies to construct and maintain telegraph lines on and along the rights of way of such railroads and railroad companies, and no railroad corporation organized or doing business in this state shall allow any telegraph corporation or company any facilities, privileges or rates for transportation of men or material or for repairing their lines not allowed to all telegraph companies. The right of eminent domain is hereby extended to all telegraph and telephone companies. The legislature shall, by general law of uniform operation, provide reasonable regulations to give effect to this section.

Telegraph company not limited, it may condemn adjacent to railroad, State ex rel. De Soucy v. Superior Court 77 W. 31.

Statute may authorize city to refuse or grant franchise, State ex rel. Tel. Co. v.

Spokane 24 W. 53. This section is not self-operative and the legislature must make further provision,

**Passes Prohibited.** §20. No railroad or other transportation company shall grant free passes, or sell tickets or passes at a discount, other than is sold to the public generally, to any member of the legislature, or to any person holding any public office within this state. The legislature shall pass laws to carry this provision into effect.

Officials shall not accept, Const., art. 2, §39. of carrier officer can avoid conditions of pass, Muldoon v. Seattle Ry. Co. 10 W. 311.

In action for damages for negligence

**Express Companies—Rights on Railroads.** §21. Railroad companies now or hereafter organized or doing business in this state, shall allow all express companies organized or doing business in this state, transportation over all lines of railroad owned or operated by such railroad companies upon equal terms with any other express company, and no railroad corporation organized or doing business in this state shall allow any express corporation or company any facilities, privileges or rates for transportation of men or materials or property carried by them or for doing the business of such express companies not allowed to all express companies.

**Monopolies and Trusts Prohibited.** §22. Monopolies and trusts shall never be allowed in this state, and no incorporated company, copartnership, or association of persons in this state shall directly or indirectly combine or make any contract with any other incorporated company, foreign or domestic, through their stockholders, or the trustees or assignees of such stockholders, or with any copartnership or association of persons, or in any manner whatever for the purposes of fixing the price or limiting the production or regulating the transportation of any product or commodity. The legislature shall pass laws for the enforcement of this section

by adequate penalties, and in case of incorporated companies, if necessary for that purpose, may declare a forfeiture of their franchise.

Contract to withdraw from steamer run of a public service not monopoly 35 W. invalid—note incollectible, *Manson v.* 503; 40 W. 315.

Hunt 82 W. 291.

Consolidation of street railways is valid.

Exclusive privilege in the performance *Wood v. Seattle* 23 W. 1.

## ARTICLE XIII.

### STATE INSTITUTIONS

#### Certain State Institutions Shall Be Established and Maintained

—Officers, How Supplied. §1. Educational, reformatory and penal institutions; those for the benefit of blind, deaf, dumb, or otherwise defective youth; for the insane and idiotic; and such other institutions as the public good may require, shall be fostered and supported by the state, subject to such regulations as may be provided by law. The regents, trustees, or commissioners of all such institutions existing at the time of the adoption of this constitution, and of such as shall thereafter be established by law, shall be appointed by the governor, by and with the advice and consent of the senate; and upon all nominations made by the governor, the question shall be taken by the ayes and noes, and entered upon the journal.

Appointed and not confirmed board have board, *State ex rel. Stearns v. Smith* 9 W. superior right to appointed and rejected 195.

## ARTICLE XIV. SEAT OF GOVERNMENT.

**State Capital.** §1. The legislature shall have no power to change, or to locate the seat of government of this state; but the question of the permanent location of the seat of government of the state shall be submitted to the qualified electors of the territory, at the election to be held for the adoption of this constitution. A majority of all the votes cast at said election, upon said question, shall be necessary to determine the permanent location of the seat of government for the state; and no place shall ever be the seat of government which shall not receive a majority of the votes cast on that matter. In case there shall be no choice of location at said first election, the legislature shall, at its first regular session after the adoption of this constitution, provide for submitting to the qualified electors of the state, at the next succeeding general election thereafter, the question of choice of location between the three places for which the highest number of votes shall have been cast at the said first election. Said legislature shall provide further, that in case there shall be no choice of location at said second election, the question of choice between the two places for which the highest number of votes shall have been cast, shall be submitted in like manner to the qualified electors of the state at the next ensuing general election; Provided, That until the seat of government shall have been permanently located as herein provided, the temporary location shall remain at the city of Olympia.

**Changed by Two-Thirds Vote.** §2. When the seat of government shall have been located as herein provided, the location thereof shall not thereafter be changed except by a vote of two-thirds of all the qualified electors of the state voting on that question, at a general election, at which the question of location of the seat of government shall have been submitted by the legislature.

**When Appropriations for Buildings to Be Made.** §3. The legislature shall make no appropriations or expenditures for capitol buildings or grounds, except to keep the territorial capitol buildings and grounds in repair, and for making all necessary additions thereto, until the seat of government shall have been permanently located, and the public buildings are erected at the permanent capital in pursuance of law.

## ARTICLE XV.

### HARBORS AND TIDE WATERS.

**Harbor Lines and Areas.** §1. The legislature shall provide for the appointment of a commission, whose duty it shall be to locate and establish harbor lines in the navigable waters of all harbors, estuaries, bays and inlets of this state, wherever such navigable waters lie within or in front of



the corporate limits of any city or within one mile thereof upon either side. The state shall never give, sell or lease to any private person, corporation or association any rights whatever in the waters beyond such harbor lines, nor shall any of the area lying between any harbor line and the line of ordinary high tide, and within not less than fifty feet nor more than six hundred feet of such harbor line (as the commission shall determine) be sold or granted by the state, nor its rights to control the same relinquished, but such area shall be forever reserved for landings, wharves, streets and other conveniences of navigation and commerce.

Legislature cannot authorize assessment on harbor areas of a lake, *State ex Seattle v. Savidge* 95 W. 240.

Leases on harbor areas cannot be assessed for local improvements, *North Am. Lum. Co. v. Blaine* 81 W. 13.

Shore land harbor lines by commissioner public lands valid, *Puget Mill Co. v. State* 93 W. 128.

Lessee has no rights between outer harbor line and U. S. pier head line, *Wilson v. Oregon-Washington R. & N. Co.* 71 W. 102.

City limits at high tide streets may be extended beyond limits—condemnation, *Tacoma v. Titlow* 53 W. 217.

Lease of harbor area for railroad—condemnation, *State ex rel. Hulme v. Grays Harbor etc. R. Co.* 54 W. 530.

"State lands" do not include "tide lands," *Seattle & Montana R. Co. v. State*

7 W. 150.

Tidelands belong to the state—no riparian rights—licenses revocable, *Eisenbach v. Hatfield* 2 W. 236.

Harbor lines cannot be changed, *Wilson v. State Land Comr's* 13 W. 65.

Lines once established shall not be changed, hence Laws '95 p 406 invalid, *Wilson v. State Land Commissioners* 13 W. 65.

"Navigation and commerce" means "Navigation" and aids thereto, *State ex rel. Denny v. Bridges* 19 W. 44.

"City" includes "town," *State ex rel. Stimson Mill Co. v. Harbor Line Commissioners* 4 W. 6.

Discretion of improving harbor areas can not be granted to individuals, hence Laws '99 p 225 §53 invalid, *State ex rel. Trimble v. Bridges* 22 W. 98.

Cited 76 W. 158.

**Lease of Areas.** §2. The legislature shall provide general laws for the leasing of the right to build and maintain wharves, docks and other structures, upon the areas mentioned in section 1 of this article, but no lease shall be made for any term longer than thirty years, or the legislature may provide by general laws for the building and maintaining upon such area wharves, docks, and other structures.

Leasing will not be controlled by prohibition, *State ex rel. White v. State Land Comr's* 23 W. 700.

**Streets Extended Over Tide Lands.** §3. Municipal corporations shall have the right to extend their streets over intervening tide lands to and across the area reserved as herein provided.

City acquiescing for 20 years in lease by state loses right to streets, *In re Percival Application* 91 W. 470.

Art. 15 §3, city streets may be extended across harbor area. L '90 p. 731 §5 has no application—gridiron in street allowed, *Chlopeck Fish Co. v. Seattle*, 64 W. 315.

Extension of streets, *State v. Forrest* 11 W. 227; vacated by legislature, *Henry v. Seattle* 42 W. 420.

Streets extended are superior to private boom location, *Globe Mill Co. v. Bellingham Bay Imp. Co.* 10 W. 458.

The right to extend streets over

tide lands is superior to "Improver's" right, *Columbia Etc. R. R. v. Seattle* 6 W. 332.

City granted franchise on street without right and afterward acquired right to street held the city was estopped, *Seattle v. Columbia Etc. R. R. Co.* 6 W. 379.

Right must be exercised at time of platting, *State ex rel. Land Co. v. Bridges* 19 W. 428.

Extension of street must be straight out and of same width, *Ilwaco v. Ilwaco Co.* 17 W. 652.

Streets must be existing streets, *Seattle & Mont. Ry. Co. v. State* 7 W. 150.

## ARTICLE XVI.

### SCHOOL AND GRANTED LANDS

**Public Lands Held in Trust—Price at Sale.** §1. All the public lands granted to the state are held in trust for all the people and none of such lands, nor any estate or interest therein, shall ever be disposed of unless the full market value of the estate or interests disposed of, to be ascertained in such manner as may be provided by law, be paid or safely secured to the state; nor shall any lands which the state holds by grant from the United States (in any case in which the manner of disposal and minimum price are so prescribed) be disposed of except in the manner and for at least the price prescribed in the grant thereof, without the consent of the United States. /

Waters on lands cannot be appropriated, *Colburn v. Winchell* 97 W. 27.

**Power of disposal including university lands in state land commission—more than 160 acres in one sale not void—review of legislation as to power of disposal, State v. Hewitt Land Co. 74 W. 573.**

**Limitation statute does not run against states title, O'Brien v. Wilson 51 W. 52. Does not prohibit condemnation of lands, Roberts v. Seattle, 63 W. 573. Grant of sections 16 and 36 is compact with state and not affected by later act, State v. Whitney, 66 W. 473.**

**State's disclaimer to certain lands. Const., art. 26.**

### **Appraisalment and Sale of Lands for Educational Purposes. §2.**

None of the lands granted to the state for educational purposes shall be sold otherwise than at public auction to the highest bidder, and the value thereof, less the improvements shall, before any sale, be appraised by a board of appraisers to be provided by law, the terms of payment also to be prescribed by law, and no sale shall be valid unless the sum bid be equal to the appraised value of said land. In estimating the value of such lands for disposal, the value of the improvements thereon shall be excluded: Provided, That the sale of all school and university land heretofore made by the commissioners of any county or the university commissioners when the purchase price has been paid in good faith, may be confirmed by the legislature.

**Requirements of enabling act as to price and manner of sale modified by proviso, Romaine v. State 7 W. 215.**

**When Lands to Be Sold. §3.** No more than one-fourth of the land granted to the state for educational purposes shall be sold prior to January 1, 1895, and not more than one-half prior to January 1, 1905: Provided, That nothing herein shall be construed as to prevent the state from selling the timber or stone off of any of the state lands in such manner and on such terms as may be prescribed by law: And provided, further, That no sale of timber lands shall be valid unless the full value of such lands is paid or secured to the state.

**Quantity Sold in Each Parcel—Platting Lands. §4.** No more than one hundred and sixty (160) acres of any granted lands of the state shall be offered for sale in one parcel, and all lands within the limits of any incorporated city or within two miles of the boundary of any incorporated city where the valuation of such lands shall be found by appraisalment to exceed one hundred dollars (\$100) per acre shall, before the same be sold, be platted into lots and blocks of not more than five acres in a block, and not more than one block shall be offered for sale in one parcel.

**Quantity applies to lands for public institutions—excess not void—applies only to federal grant, State v. Hewitt Land Co. 74 W. 573.**

**Investment of the Permanent School Fund. §5.** None of the permanent school fund of this State shall ever be loaned to private persons or corporations, but it may be invested in national, state, county, municipal or school district bonds. (Adopted November, 1894.)

**Fund cannot be invested in capitol building bonds, State Capitol Com'n v. Board, 74 W. 74.**

**Losses to be repaid, Const., art. 9, §5.**

**Special waterworks bonds of a city are not proper instruments. State ex rel. Port Townsend v. Clausen 40 W. 95.**

**Issuance of state bonds to permanent school fund proceeds to be applied to pay-**

**ing general fund warrants is valid, State ex rel. Winston v. Rogers 21 W. 206.**

**Permanent school fund can not be invested in state warrants, State ex rel. Helmar v. Young 21 W. 391.**

**Fund may be invested in school district bonds, State ex rel. School District v. Grimes 7 W. 270.**

## **ARTICLE XVII.**

### **TIDE LANDS.**

**State Asserts Title to All Tide and Shore Lands and Beds of Navigable Streams. §1.** The State of Washington asserts its ownership to the beds and shores of all navigable waters in the state up to and including the line of ordinary high tide, in waters where the tide ebbs and flows, and up to and including the line of ordinary high water within the banks of all navigable rivers and lakes: Provided, That this section shall not be construed so as to debar any person from asserting his claim to vested rights in the courts of the state.

**Legislature cannot authorize assessments on harbor areas of a lake, State ex rel. Seattle v. Savidge 95 W. 240.**

**Lake about 5 feet deep in winter and about 1½ feet in summer held not navigable. Neterer v. State 98 W. 635.**



Occasional use at high tide does not determine navigability—grant to railroad—fisherman ousted, *Wilson v. Prickett* 79 W. 89.

Riparian rights in tide and shore lands destroyed by above section, *State v. Sturtevant* 76 W. 158, 86 W. 1.

No title to gravel in bed of navigable stream, *Com'rs Com. W. Dist. v. Seattle Factory Sites Co.* 76 W. 181.

State may divert stream without damage to riparian owner, *Newell v. Loeb* 77 W. 182.

Title to beds of unnavigable lakes is not in the state, but in riparian owners—irrigation, *Bernot v. Morrison* 81 W. 538.

Title to bed of stream that will float only logs and shingle bolts is in adjacent owner—right to flow—description in deed—defense as riparian owner, *State ex rel Davis v. Superior Court* 84 W. 252.

Grant to county for ferry, etc., landings is limited grant and is not public, *Anderson Steamboat Co. v. King County* 84 W. 375.

Riparian owners have no rights in bed of stream abandoned or granted by the state, *Hill v. Newell* 86 W. 227.

"Pothole" and channel never bare are not conveyed by state's deed, *State v. Scott* 89 W. 63.

Irrigator may dam lake to level of high water, though shore lands purchased by others, *Kalez v. Spokane Valley L. & W. Co.* 89 W. 514.

Title to bed of navigable unmeandered slough is in the state, *Washington Boom Co. v. Chehalis Boom Co.* 90 W. 350.

Waters of stream not navigable may be diverted by power company, *Sumner Lum-*

*ber Co. v. Pacific Coast P. Co.* 72 W. 631.

Grantee of U. S. has no riparian rights—Lake Washington shore owners, *Bilger v. State*, 63 W. 457.

Owner of upland on inland lake has no rights to water for irrigation superior to the right of appropriation of non-adjacent owners, *State ex rel. Ham v. Court*, 70 W. 442.

Land above high tide up to meander line passes to patentee, *Nassa v. Seaborg*, 64 W. 164.

Ownership by state does not deprive riparian owners without due process of law, *McGillvra v. Ross* 164 Fed. 604.

Title asserted below low tide, *State ex rel. McKenzie v. Forrest* 11 W. 227; to small inland lake, *Madson v. Spokane etc. Co.* 42 W. 414.

"Navigable" in natural condition, *East Hoquiam etc. Co. v. Neeson* 20 W. 142.

Limitation does not run against state, nor is state estopped by possession, *Brace & Hergert Mill Co. v. State* 49 W. 326.

The right of a riparian proprietor in water can not be divested by a city without condemnation, *New Whatcom v. Fairhaven Land Co.* 24 W. 493.

State asserts title to beds of waters only that are navigable for general commercial purposes and not to mere highways for floating logs, *Watkins v. Dorris* 24 W. 636.

Lands below high water mark in fresh water lakes belong to the state, *McCue v. Bellingham Bay Water Co.* 5 W. 156.

Right asserted against proposed easements, wharves, etc., *Eisenbach v. Hatfield* 2 W. 236; *Harbor Line Com'rs v. State ex rel. Yesler* 2 W. 530.

**Does Not Include Patented Lands.** §2. The state of Washington disclaims all title in and claim to all tide, swamp and overflowed lands, patented by the United States: Provided, that same is not impeached for fraud.

A patent prior to the adoption of the state constitution passed title to tide lands included within the government meander line, and the owner of such lands is entitled to the preference right to purchase abutting tide lands abutting thereon, under §6410. *Bleakley v. Lake Washington Mill Co.* 65 W. 215.

This section confirms patents issued after statehood to parties entitled, *Kneeland v. Korter* 40 W. 359.

Includes lands in front of Indian reservation—lands reserved by President's proclamation, *Jones v. Callvert* 32 W. 610.

Grant of tide lands once patented binds grantor, *Denny v. N. P. Ry. Co.* 32 W. 298.

State can not assert title to patented tide lands, *Cogswell v. Forrest* 14 W. 1; *Scurry v. Jones* 4 W. 468.

Patents convey to high water mark although meander line above the same, *Washougal Tr. Co. v. Dalles Nav. Co.* 27 W. 490.

Title by accretion can not be claimed by the state in front of private owner, *Id.*

Grant of tide lands in front of a lot does not convey above meander line, *Shelton Logging Co. v. Gosser* 26 W. 126.

Whether patent conveys below high water mark is federal question, *Kenyon v. Squire* 1 W. 9, 11, 12.

## ARTICLE XVIII.

### STATE SEAL.

**Seal of the State.** §1. The seal of the state of Washington shall be, a seal encircled with the words: "The seal of the state of Washington," with the vignette of Gen. George Washington as the central figure, and beneath the vignette the figures "1889."

Secretary State is custodian, Const., art. 3, §18.

## ARTICLE XIX.

## EXEMPTIONS.

**Exemptions From Execution.** §1. The legislature shall protect by law from forced sale a certain portion of the homestead and other property of all heads of families.

Statute providing no exemption for wages, etc., valid, *In re Vonhee* 238 Fed. 422.

Statute providing for forced sale for mechanic's liens, etc., valid, *Brace & Hergert Mill Co. v. Burbank* 87 W. 356.

Waiver of exemption—§7858 invalid, *Slyfield v. Willard* 43 W. 179.

Chattels exempt may be mortgaged. *Cammarano v. Longmire* 99 W. 360.

Homestead is not subject to judgment lien, *Traders Bank v. Schorr* 20 W. 1.

Homestead may be voluntarily encumbered—husband may mortgage under general power of attorney from wife, *Oregon Mort. Co. v. Hersner* 14 W. 515 704.

## ARTICLE XX.

## PUBLIC HEALTH AND VITAL STATISTICS.

**State Board of Health.** §1. There shall be established by law a state board of health and a bureau of vital statistics in connection therewith, with such powers as the legislature may direct.

Public health must be protected. Const. Art. 2, §35.

City has power to protect the public health—syphilis—habeas corpus—detention—state statutes, *State ex McBride v. Court* 103 W. 409.

Public health regulation valid though arbitrary as police regulation, *State v. Buchanan* 29 W. 602.

Regulation of the "practice" of dentistry valid but prohibition on "ownership etc." of dental office invalid, *State v. Brown* 37 W. 97, 110.

Regulation of practice of medicine valid, *State v. Carey* 4 W. 424; of barbers, *State v. Sharpless* 31 W. 191.

License of blacksmiths invalid, *In re Aubrey* 56 W. 308; of plumbers, *State ex rel. Richey v. Smith* 42 W. 237.

**Medicine and Surgery.** §2. The legislature shall enact laws to regulate the practice of medicine and surgery, and the sale of drugs and medicines.

## ARTICLE XXI.

## WATER AND WATER RIGHTS.

**When Use of Water a Public Use.** §1. The use of the waters of the state for irrigation, mining and manufacturing purposes shall be deemed a public use.

Does not destroy riparian rights in unnavigable waters, *Bernot v. Morrison* 81 W. 538.

Lands may be taken for reservoir site, *State ex. Golden Val. etc. Co. v. Court*, 67 W. 556.

Confers authority for providing for condemnation of irrigating ditches, *State ex*

*rel. Galbraith v. Superior Court* 59 W. 621.

Water cannot be taken for private use, *State ex rel. Tacoma etc. Co. v. White River etc. Co.* 39 W. 648.

Irrigation is a public use, *Prescott Irr. Co. v. Flathers* 20 W. 454; *Kalez v. Spokane Valley etc. Co.* 42 W. 43.

## ARTICLE XXII.

[Superseded by §3558]

## ARTICLE XXIII.

## AMENDMENTS.

**Amendments to Constitution.** §1. Any amendment or amendments to this constitution may be proposed in either branch of the legislature; and if the same shall be agreed to by two-thirds of the members elected to each of the two houses, such proposed amendment or amendments shall be entered on their journals, with the ayes and noes thereon, and be submitted to the qualified electors of the state for their approval, at the next general election; and if the people approve and ratify such amendment or amendments, by a majority of the electors voting thereon, the same shall become part of this constitution, and proclamation thereof shall be made by the governor; Provided, That if more than one amendment be submitted, they shall be submitted in such a manner that the people may vote for or



against such amendments separately. The legislature shall also cause the amendments that are to be submitted to the people to be published for at least three months next preceding the election, in some weekly newspaper, in every county where a newspaper is published throughout the state.

Procedure in submission to vote §2099; publication in fact for three months cures counting and proclamation of vote §2189. defect of act—ballot statement, *Cudihee v.*

Vote necessary to adopt amendment *Phelps* 76 W. 314.  
Strain v. Young 25 W. 383.

Entry on journals satisfied by entry of publication—two amendments, *Gottstein v.*  
title of act proposing amendment—act directing publication for three weeks but *Lister* 88 W. 462.

**Constitutional Convention.** §2. Whenever two-thirds of the members elected to each branch of the legislature shall deem it necessary to call a convention to revise or amend this constitution, they shall recommend to the electors to vote at the next general election, for or against a convention, and if a majority of all the electors voting at said election shall have voted for a convention, the legislature shall at the next session, provide by law for calling the same; and such convention shall consist of a number of members, not less than that of the most numerous branch of the legislature.

**Proposed Constitution Shall Be Submitted.** §3. Any constitution adopted by such convention shall have no validity until it has been submitted to and adopted by the people.

## ARTICLE XXIV.

### BOUNDARIES.

**Boundaries of the State.** §1. The boundaries of the State of Washington shall be as follows: Beginning at a point in the Pacific Ocean one marine league due west of and opposite the middle of the mouth of the north ship channel of the Columbia river thence running easterly to and up the middle channel of said river and where it is divided by islands up the middle of the widest channel thereof to where the forty-sixth parallel of north latitude crosses said river near the mouth of the Walla Walla river; thence east on said forty-sixth parallel of latitude to the middle of the main channel of the Shoshone or Snake river, thence follow down the middle of the main channel of Snake river to a point opposite the mouth of the Kooskooskia or Clear Water river, thence due north to the forty-ninth parallel of north latitude, thence west along said forty-ninth parallel of north latitude to the middle of the channel which separates Vancouver's island from the continent, that is to say to a point in longitude 123 degrees, 19 minutes and fifteen seconds west, thence following the boundary line between the United States and British possessions through the channel which separates Vancouver's island from the continent to the termination of the boundary line between the United States and British possessions at a point in the Pacific Ocean equidistant between Bonilla point on Vancouver's island and Tatoosh island lighthouse, thence running in a southerly course and parallel with the coast line, keeping one marine league off shore to place of beginning.

## ARTICLE XXV.

### JURISDICTION.

**Jurisdiction of the United States—State's Process.** §1. The consent of the State of Washington is hereby given to the exercise, by the Congress of the United States, of exclusive legislation in all cases whatsoever over such tracts or parcels of land as are now held or reserved by the government of the United States for the purpose of erecting or maintaining thereon forts, magazines, arsenals, dock yards, lighthouses and other needful buildings, in accordance with the provisions of the seventeenth paragraph of the eighth section of the first article of the constitution of the United States, so long as the same shall be so held and reserved by the United

States. Provided: That a sufficient description by metes and bounds, and an accurate plat or map of each such tract or parcel of land be filed in the proper office of record in the county in which the same is situated, together with copies of the orders, deeds, patents or other evidences in writing of the title of the United States: And provided, That all civil process issued from the courts of this state and such criminal process as may issue under the authority of this state against any person charged with crime in cases arising outside of such reservations, may be served and executed thereon in the same mode and manner, and by the same officers, as if the consent herein given had not been made.

Laws respecting private rights follow gation, Bernot v. Morrison 81 W. 538.  
territory granted, Steele v. Halligan 229 State has no title to tide lands fronting  
Fed. 1011. Indian reservations. United States v.  
Title to beds of unnavigable lakes is not O'Brien 170 Fed. 508; United States v.  
in the state, but in riparian owners—irri- Ashton 170 Fed. 509.

## ARTICLE XXVI.

### COMPACT WITH THE UNITED STATES.

The following ordinance shall be irrevocable without the consent of the United States and the people of this state:

**Religious Toleration.** First. That perfect toleration of religious sentiment shall be secured and that no inhabitant of this state shall ever be molested in person or property on account of his or her mode of religious worship.

**Right to Public Lands and Indian Reservations Disclaimed—Taxation of Non-Residents and Indians.** Second. That the people inhabiting this state do agree and declare that they forever disclaim all right and title to the unappropriated public lands lying within the boundaries of this state, and to all lands lying within said limits owned or held by any Indian or Indian tribes; and that until the title thereto shall have been extinguished by the United States, the same shall be and remain subject to the disposition of the United States, and said Indian lands shall remain under the absolute jurisdiction and control of the congress of the United States and that the lands belonging to citizens of the United States residing without the limits of this state shall never be taxed at a higher rate than the lands belonging to residents thereof; and that no taxes shall be imposed by the state on lands or property therein, belonging to or which may be hereafter purchased by the United States or reserved for use: Provided, That nothing in this ordinance shall preclude the state from taxing as other lands are taxed any lands owned or held by any Indian who has severed his tribal relations, and has obtained from the United States or from any person a title thereto by patent or other grant, save and except such lands as have been or may be granted to any Indian or Indians under any act of congress containing a provision exempting the lands thus granted from taxation, which exemption shall continue so long and to such an extent as such act of congress may prescribe.

**Territorial Debt Assumed.** Third. The debts and liabilities of the Territory of Washington and payment of the same are hereby assumed by this state.

**Public School System.** Fourth. Provision shall be made for the establishment and maintenance of systems of public schools free from sectarian control which shall be open to all the children of said state.

## ARTICLE XXVII.

### SCHEDULE.

In order that no inconvenience may arise by reason of a change from territorial to a state government, it is hereby declared and ordained as follows:



**Existing Rights and Proceedings Saved.** §1. No existing rights, actions, suits, proceedings, contracts or claims shall be affected by a change in the form of government, but all shall continue as if no such change had taken place; and all process which may have been issued under the authority of the Territory of Washington previous to its admission into the Union shall be as valid as if issued in the name of the state.

Cited, *Cunnius v. Reading School District*, 198 U. S. 473.

**Territorial Laws Continued—Grant of Tide Lands Excepted.**

§2. All laws now in force in the Territory of Washington, which are not repugnant to this constitution, shall remain in force until they expire by their own limitation, or are altered or repealed by the legislature; Provided, That this section shall not be so construed as to validate any act of the legislature of Washington Territory granting shore or tide lands to any person, company or any municipal or private corporation.

Act 1869 authorizing indorsement of warrants continued in force, *State ex rel. Capital Nat. Bank v. Young* 22 W. 547; attorney general's duties, *State ex rel. Att'y Gen. v. Seattle Gas Co.* 28 W. 488.

Cannot be construed as re-enacting statute, *State v. Ellis* 22 W. 129.

Laws declared to be not in force by the

courts were not continued, *State v. Halbert* 14 W. 310.

Federal courts will hold invalid territorial laws valid if state has recognized them as valid, as in the case of the statute defining rape, *In re Moore* 81 Fed. Rep. 356.

Township liable for statutory tort. *Orrock v. South Moran Twp.* 97 W. 144.

**Debts, etc., Due Territory Enure to State.** §3. All debts, fines, penalties and forfeitures, which have accrued, or may hereafter accrue, to the Territory of Washington, shall enure to the state of Washington.

**Rights Under Recognizances, etc., Enure to State.** §4. All recognizances heretofore taken, or which may be taken before the change from a territorial to a state government shall remain valid, and shall pass to, and may be prosecuted in the name of the state, and all bonds executed to the territory of Washington or to any county or municipal corporation, or to any officer or court in his or its official capacity, shall pass to the state authorities and their successors in office, for the uses therein expressed, and may be sued for and recovered accordingly, and all the estate, real, personal and mixed, and all judgments decrees, bonds, specialties, choses in action, and claims or debts, of whatever description, belonging to the territory of Washington, shall enure to and vest in the state of Washington, and may be sued for and recovered in the same manner, and to the same extent, by the state of Washington, as the same could have been by the territory of Washington.

**Criminal Actions Saved.** §5. All criminal prosecutions and penal actions which may have arisen, or which may arise, before the change from a territorial to a state government, and which shall then be pending, shall be prosecuted to judgment, and execution in the name of the state. All offenses committed against the laws of the territory of Washington, before the change from a territorial to a state government, and which shall not be prosecuted before such change, may be prosecuted in the name and by the authority of the state of Washington, with like effect as though such change had not taken place; and all penalties incurred shall remain the same as if this constitution had not been adopted. All actions at law and suits in equity which may be pending in any of the courts of the territory of Washington, at the time of the change from a territorial to a state government, shall be continued, and transferred to the court of the state having jurisdiction of the subject matter thereof.

Section construed, *Moore v. Perrot* 2 W. 1; *Way v. Woolery* 6 W. 157.

**Public Officers Shall Continue Until Superseded.** §6. All officers now holding their offices under the authority of the United States, or of the territory of Washington, shall continue to hold and exercise their respective offices until they shall be superseded by the authority of the state.

Section construed, *Garneau v. Mill Co.* 8 W. 467; *Smalley v. Snell* 6 W. 161.

**Time of Election of Officers Not Provided For.** §7. All officers provided for in this constitution including a county clerk for each county when no other time is fixed for their election, shall be elected at the election

to be held for the adoption of this constitution on the first Tuesday of October, 1889.

**Transfer of Causes in the Courts.** §8. Whenever the judge of the superior court of any county, elected or appointed under the provisions of this constitution shall have qualified, the several causes then pending in the district court of the territory except such causes as would have been within the exclusive jurisdiction of the United States district court had such court existed at the time of the commencement of such causes, within such county, and the records, papers and proceedings of said district court, and the seal and other property pertaining thereto, shall pass into the jurisdiction and possession of the superior court for such county. And where the same judge is elected for two or more counties, it shall be the duty of the clerk of the district court having custody of such papers and records to transmit to the clerk of such county, or counties, other than that in which such records are kept the original papers in all cases pending in such district court and belonging to the jurisdiction of such county or counties together with transcript of so much of the records of said district court as relate to the same; and until the district courts of the territory shall be superseded in manner aforesaid, the said district courts and the judges thereof, shall continue with the same jurisdiction and powers, to be exercised in the same judicial districts respectively, as heretofore constituted under the laws of the territory. Whenever a quorum of the judges of the supreme court of the state shall have been elected and qualified, the causes then pending in the supreme court of the territory, except such causes as would have been within the exclusive jurisdiction of the United States circuit court had such court existed at the time of the commencement of such causes, and the papers, records and proceedings of said court and the seal and other property pertaining thereto, shall pass into the jurisdiction and possession of the supreme court of the state, and until so superseded, the supreme court of the territory and the judges thereof, shall continue with like powers and jurisdiction as if this constitution had not been adopted.

**Seals of the Courts.** §9. Until otherwise provided by law, the seal now in use in the supreme court of the territory shall be the seal of the supreme court of the state. The seals of the superior courts of the several counties of the state shall be, until otherwise provided by law, the vignette of General George Washington with the words: "Seal of the Superior Court of \_\_\_\_\_ County" surrounding the vignette. The seal of municipalities, and of all county officers of the territory, shall be the seals of such municipalities, and county officers respectively under the state, until otherwise provided by law.

**Transfer of Probate Causes.** §10. When the state is admitted into the Union, and the superior courts in the respective counties organized, the books, records, papers and proceedings of the probate court in each county, and all causes and matters of administration pending therein, shall, upon the expiration of the term of office of the probate judges, on the second Monday in January, 1891, pass into the jurisdiction and possession of the superior court of the same county created by this constitution, and the said court shall proceed to final judgment or decree, order or other determination in the several matters and causes, as the territorial probate court might have done, if this constitution had not been adopted. And until the expiration of the term of office of the probate judges, such probate judges shall perform the duties now imposed upon them by the laws of the territory. The superior courts shall have appellate and revisory jurisdiction over the decisions of the probate courts, as now provided by law, until such latter courts expire by limitation.

Review of former judgment by superior court. Ball v. Clothier 34 W. 299.

**Legislature Shall Provide for Election and Term of Officers Not Provided For.** §11. The legislature, at its first session, shall provide for the election of all officers whose election is not provided for elsewhere in



- Amendment by either house after passage by other, Art. 2 §20.  
 Purpose not to be changed, Art. 2 §38.  
 Ayes and noes on final passage and majority, Art. 2 §22.  
 Enacting clause, form of, Art. 2 §18.  
 Final passage, requisites, Art. 2 §22.  
 Governor, presentation to, Art. 3 §12.  
 Approval, not necessary, when, Art. 3 §12.  
 Veto, passage over, Art. 3 §12.  
 Initiated or referred measures, Art. 2 §1.  
 Laws enacted only by, Art. 2 §18.  
 Limitation on, introduction, Art. 2 §36.  
 Originate in either house, Art. 2 §20.  
 Passage, procedure in, Art. 2 §22.  
 Vote by interested legislators prohibited, Art. 2 §30.  
 Presiding officers of both houses shall sign, Art. 2 §32.  
 Referendum by petition or legislature, Art. 2 §1.  
 Subject limited to one title, Art. 2 §19.  
 Title of, to express contents, Art. 2 §19.  
 Veto of, power of governor, Art. 3 §12.  
 Denied in initiated laws, Art. 2 §1.  
 Separate items or sections, Art. 3 §12.
- BILL OF ATTAINDER**  
 Prohibited, Art. 1 §23.
- BONDS**  
 Corporations only for value, Art. 12 §6.  
 Investment of permanent school funds, Art. 16 §5.  
 Municipal corporations not to own bonds of private corporation, Art. 8 §7.  
 Territory to pass to state, Art. 27 §4.
- BOUNDARIES**  
 County, change by division or enlargement, Art. 11 §3.  
 Counties not to be changed by special law, Art. 2 §28 (18).  
 State defined, Art. 24 §1.
- BREACH OF THE PEACE**  
 Legislator has no privilege, Art. 2 §16.
- BRIBERY**  
 Criminating evidence compulsory, Art. 2 §30.  
 Disqualifies for holding office, Art. 2 §30.
- BUREAU OF STATISTICS**  
 Legislature to create, Art. 2 §34.
- BUREAU OF VITAL STATISTICS**  
 Legislature to create—health board, Art. 20 §1.
- CANAL COMPANIES**  
 Common carriers, Art. 12 §13.  
 Discrimination in charges prohibited, Art. 12 §15.
- CAPITAL**  
 Buildings restricted—repairs, Art. 14 §3.  
 Location, how determined, Art. 14 §1.  
 State officers required to reside at—records, Art. 3 §24.
- CAPITAL OFFENSES**  
 Ballable, when, Art. 1 §20.
- CARRIERS**  
 Legislative control, Art. 12 §13. See Common Carriers.
- CENSUS**  
 Apportionments of legislative members based on, Art. 2 §3.  
 Enumeration between federal, Art. 2 §3.  
 Exclusion of Indians, soldiers, sailors and officers of army and navy, Art. 2 §3.
- CERTIORARI**  
 Jurisdiction of superior court, Art. 4 §6; of supreme court, Art. 4 §4.
- CESION OF JURISDICTION**  
 United States to have, certain areas, except, Art. 25 §1.
- CHAMBERS**  
 Court commissioners have powers of judge, Art. 4 §23.
- CHANGE**  
 County seats or county lines by special law prohibited, Art. 2 §28 (18).  
 Names of persons by special law prohibited, Art. 2 §28 (1).  
 Salaries or terms, county, etc., officers prohibited, Art. 2 §25, Art. 3 §25, Art. 11 §8.
- CHAPLAINS**  
 Allowed in certain state institutions, Art. 1 §11.
- CHARTERS**  
 Corporate, special acts prohibited—territorial not exercised, void, Art. 12 §1-3.  
 Power of state to amend or repeal, Art. 12 §1.  
 Municipal, special acts prohibited, Art. 2 §28 (8).  
 General laws granting—freeholders—elections, etc., Art. 11 §10.
- CHIEF JUSTICE OF SUPREME COURT**  
 Chosen, how, Art. 4 §3.  
 Impeachments, presides, when, Art. 5 §1.
- CHILDREN**  
 Adoption of, by special law prohibited, Art. 2 §28 (16).  
 Age, special laws respecting, prohibited, Art. 2 §28 (11).  
 Special laws respecting property prohibited, Art. 2 §28 (4, 11).  
 State to educate all, Art. 9 §1; compact with U. S., Art. 26.
- CHURCHES**  
 Sectarianism not allowed in public schools, Art. 9 §4, Art. 26.
- CITIES AND TOWNS**  
 Amendment of charter by special act prohibited, Art. 2 §28 (8).  
 Charter by special law prohibited, Art. 2 §28 (8).  
 Classification of, Art. 11 §10.  
 Constables in cities of over 5,000—salary, Art. 11 §8.  
 Corporate stock or bonds, not to be owned, Art. 8 §7.  
 Credit, not to be loaned, Art. 8 §7.  
 Debt, limitation of, general and special, Art. 8 §6.  
 Freeholder's charter, framing and adoption, Art. 11 §10.  
 Incorporation, under general laws, Art. 11 §10, Art. 2 §28 (8).  
 Indebtedness, limitation—special purposes, Art. 8 §6.  
 Justices of peace—police justices—salaries, Art. 4 §10.  
 Local improvements by special assessment, Art. 7 §9.  
 Police and sanitary regulations, powers, Art. 11 §11.  
 Police justice, Art. 4 §10.  
 Public moneys, deposit with treasurer, Art. 11 §15.  
 Use of felony, Art. 11 §14.  
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 Salary or term of officer not changed during term, Art. 11 §8.  
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- CITIZENS**  
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- CIVIL ACTIONS.** See Actions.
- CIVIL POWER**  
 Elections free from interference, Art. 1 §19.  
 Military subordinate to, Art. 1 §18.
- CIVIL PROCESS**  
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- CLASSIFICATION**  
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- CLERKS SUPERIOR COURTS**  
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- CLERK OF THE SUPREME COURT**  
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- COLORED PEOPLE**  
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- COMBINATIONS**  
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- COMMENT ON FACTS**  
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- COMMISSION**  
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- COMMISSIONER OF PUBLIC LANDS**  
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- COMMISSIONS**  
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 Governor shall sign—attest of, Art. 3 §15.
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 Legislature, subject to control, Art. 12 §13.  
 Maximum rates by legislature, Art. 12 §18.  
 Pooling of earnings prohibited, Art. 12 §14.  
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- 12 §19.  
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**COMMON SCHOOL FUND**  
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 State tax prohibited, Art. 11 §9.  
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**COMPENSATION**  
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 Constables in cities of over 5,000, Art. 11 §8.  
 County and local officers, Art. 11 §§5, 8.  
 Extra, not to be granted public officers, Art. 2 §25.  
 Private property taken for public use, Art. 1 §16.  
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**COUNTY CLERK**  
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**COUNTY INDEBTEDNESS**  
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**AN ACT to regulate the practice and proceedings in civil actions.** Approved December 1, 1881. C81 §§1-763.

**FORMER LAWS:—GENERAL ACT '54** p 129; §323 amd '55-6 p 8; amd generally '56-7 p 7; §12 amd '58-9 p 4; stay of execution in supreme and district courts '54 p 377; §1 amd '59-60 p 328; additional exemptions from execution and attachment '54 p 378; limitation of actions '54 p 362; garnishment 54-5 p 41; change of person's name '54-5 p 23.

**GENERAL ACT '59-60 p 3;** amd generally '60-61 p 50; §§246-7 amd '60-61 p 42; limitation of actions '59-60 p 289; §11 amd '60-61 p 61; arbitration and award '59-60 p 323; exemptions from execution and attachment '60-61 p 52; intervention before confirmation of sale of realty on execution '60-61 p 47.

**GENERAL ACT '62-3 p 81;** §57 amd '63-4 p 13; §67, §82 amd '66-7 p 92; §289 amd '65-6 p 91; §302 amd '67-8 p 56; §359 amd 64-5 p 20; §377 amd '63-4 p 13; change of persons' names '62-3 p 411; hearings at chambers 64-5 p 24; negroes as witnesses

'65-6 p 91; suits on foreign judgments '65-6 p 88, amd '66-7 p 95; mandate and prohibition at chambers '66-7 p 86; depositions in the Territory '66-7 p 89; parties as witnesses '66-7 p 88; garnishment of person owing negotiable instrument '66-7 p 86; venue '66-7 p 87; instructions to juries to be in writing '67-8 p 55; injunction against infringement of patent '67-8 p 39; venue in civil and criminal actions '67-8 p 51.

**GENERAL ACT '69 p 3;** §§2. 59-64, 66-71, 172-3, 193, 291 and 363 amd '71 p 3; §459 amd '71 p 110; §§331-36, 433, 447-8, 691, and 693 repld '71 p 3.

**GENERAL ACT '73 p 3;** general amdts '75 p 3; §502 amd '77 p 327; how joint debtors not served bound by judgment '75 p 41.

**GENERAL ACT '77 p 3;** §351 amd '79 p 157; §394 amd '79 p 118; §460 amd '79 p 122; common law adopted '77 p 326; ejectment '79 p 134.

## APPEALS.

Bonds by surety companies §§493, 3120, 4542.

Commercial waterway condemnation §1386.  
Commitments to state training school §6766.

County boundary cases §1494.

Dike cases §1946-26.

Divorce cases §7512.

Eminent domain by private corporations §7655.

Eminent domain by cities §7560.

Eminent domain by state §7669.

Forcible entry and detainer cases §§7987, 7989.

Grade separation cases §5650.

Local assessment cases in cities §1010.

Public service cases §5613.

State land cases §6452.

State land, school, etc., confirmation cases §6543.

Tax foreclosures §6999.

Townsite act §1338.

Water code cases §7225.

Water district cases §§7250-13.

**Substitute—AN ACT relating to appeals to the supreme court.** Approved March 8, 1893. General Repeal. Laws '93 p 119.

**FORMER LAWS:** '83 p 59; '89-90 pp 333, 336; '91 p 341.

**§7290. What Decisions Appealable.** §1. Any party aggrieved may appeal to the supreme court in the mode prescribed in this title from any or every of the following determinations, and no others, made by the superior court, or a judge thereof, in any action or proceeding.

(1) From the final judgment entered in any action or proceeding, and an appeal from any such final judgment shall also bring up for review any order made in the same action or proceeding either before or after the judgment, in case the record sent up on the appeal, or any supplementary record sent up before the hearing thereof, shall show such order sufficiently for the purposes of a review thereof;

(2) From any order refusing to vacate an order of arrest in a civil action;

(3) From an order granting or denying a motion for a temporary injunction, heard upon notice to the adverse party, and from any order vacating or refusing to vacate a temporary injunction; Provided, That no appeal shall be allowed from any order denying a motion for a temporary injunction, or vacating a temporary injunction, unless the judge of the superior court shall have found upon the hearing, that the party against whom the injunction was sought was insolvent;

(4) From any order discharging or refusing to discharge an attachment;

(5) From any order appointing or removing, or refusing to appoint or remove, a receiver;

(6) From any order affecting a substantial right in a civil action or proceeding, which either, (1) in effect determines the action or proceeding and prevents a final judgment therein; or (2) discontinues the action; or (3) grants a new trial; or (4) sets aside or refuses to affirm an award of arbitrators, or refers the cause back to them;

(7) From any final order made after judgment, which affects a substantial right; and an appeal from any such order shall also bring up for review any previous order in the same action or proceeding which involves the merits and necessarily affects the order appealed from, in case the record sent up on the appeal, or any supplementary record sent up before the hearing thereof, shall show such previous order sufficiently for the purposes of a review thereof. But an appeal shall not be allowed to the state in any criminal action, except when the error complained of is in setting aside the indictment or information, or in arresting the judgment on the ground that the facts stated in the indictment or information do not constitute a crime, or is some other material error in law not affecting the acquittal of a prisoner on the merits.

Supreme court organization and jurisdiction, §8660.

Exceptions, §7809.

Certiorari supplements appeal, §7418.

Appeals: extraordinary writs, §8392; eminent domain by state, §7769; by cities, §7560; by private corporations, §7646; in tax foreclosure, §6999; from decree approving bonds in irrigation cases, §3274; in drainage cases, §1947-13; in dike cases, §1946-26.

Appeal does not affect lien of judgment except to extend time, §8121.

Attorney may appeal from order fixing compensation upon stipulation, *Jones v. Jones*, 72 W. 517.

Neither an order of default for failure to answer, nor an interlocutory order directing specific performance or an alternative sale of property, is final and appealable, *Borell v. Carson* 72 W. 117.

#### Subd. 1.

Memorandum decision held direction to attorneys in preparation of final judgment, appeal dismissed, *In re Christensen's Estate*, 77 W. 629.

Temporary alimony and attorney fee order appealable in ninety days, *State ex rel. Surry v. Superior Court*, 74 W. 689.

Order overruling prosecuting attorney's demurrer to petition requiring quo warranto and directing him to investigate is not appealable, *State ex rel. Cummings v. Superior Court* 91 W. 81.

Order striking part of cross-complaint not final, *Methow Canal Co. v. Barton*, 71 W. 401.

Order for attorneys' fees and temporary alimony appealable, *Dilatush v. Dilatush* 102 W. 504.

Order denying motion to reopen case for further testimony not appealable, *Kahn v. Kahn* 103 W. 26.

Order vacating lis pendens after appeal can be brought up and prohibition will not lie, *State ex rel. Sligh v. Superior Court* 19 W. 118.

Appeal from final judgment brings up all interlocutory orders, *Bingham v. Keylor* 25 W. 156.

Remanding prisoners in habeas corpus is appealable, *In re Foye* 21 W. 250; *In re Baker id.* 259.

Appeal from final judgment brings up attachment, *Maxwell v. Griffiths* 20 W. 106.

Certiorari denied because insolvency not shown, *State ex rel. Mohr v. Superior Court* 54 W. 225.

Certiorari can not be invoked to review case after injunction denied—appeal from damage judgment is remedy, *State ex rel.*

*Young v. Superior Court* 42 W. 34.

Finding of insolvency is jurisdictional, *Anderson v. McGregor* 36 W. 124.

Temporary mandatory injunction is appealable, *State ex rel. Byers v. Superior Court* 28 W. 403.

#### —, Subd. 4.

Amendable complaint not triable on interlocutory appeal, *Johnson v. Muenz* 76 W. 526.

Order releasing surety on bond for discharge of attachment is appealable, *Brady v. Onffroy* 37 W. 482.

Order discharging attachment after judgment is appealable, *Sheppard v. Guisler* 10 W. 41.

Court will take notice of appeal pending on discharge of attachment, in appeal in suit on bond, *Manvell v. Griffiths* 20 W. 106.

Order discharging attachment is not appealable, *Jensen v. Hughes* 12 W. 661; *Spokane Dry Goods Co. v. Fritz* 26 W. 433.

#### —, Subd. 5.

Appeal must be direct from order or no question can be raised, *Jones v. North Pacific Fish Co.* 42 W. 332.

Statute means receivership and not personnel, *Davis v. Edwards* 41 W. 480.

Removing receiver and appointing another is not appealable, *State ex rel. Tilton v. Superior Court* 7 W. 74.

Order discharging part of goods in hands of receiver appealable, *Armstrong v. Ford* 10 W. 64.

Order directing receiver to sell property is appealable, *State ex rel. Newland v. Superior Court* 16 W. 444.

#### —, Subd. 6.

Order requiring defendant to elect between inconsistent defenses not appealable, *Virtue v. Stanley* 79 W. 87.

Defendant, general guardian, cannot appeal when minors interest adverse—guardian ad litem, *Battyany v. McNeley* 83 W. 666.

Order allowing after judgment the substitution of plaintiffs and pleadings, appealable, *Burke v. Northern Pac. R. Co.* 80 W. 188.

Order denying motion for new trial not appealable, *Palch v. Northern Pac. R. Co.* 88 W. 163.

Order requiring plaintiff to bring in another party defendant is not appealable, *Sliscovich v. Scandinavian-Am. Bank* 78 W. 660.

Appeal does not lie from order denying motion to strike complaint in intervention.



State ex rel. Rutter v. Superior Court 91 W. 304.

Appeal will not lie from order sustaining a demurrer, Schutzler v. Times Pub. Co. 88 W. 236.

Dismissal of citation to administrator to include property in inventory, appealable, In re Martin's Estate 82 W. 226.

Order in probate confirming sale of personalty appealable, In re Crim's Estate 89 W. 395.

Striking complaint in intervention is not appealable, Lanigan v. Miles 89 W. 6.

Residence of deceased in question appeal will lie from order admitting will to probate, State ex rel. Neal v. Kauffman 86 W. 172.

Purchaser at partition sale, not a party to action, may appeal from order vacating judgment and setting aside sale, Prince v. Mottman 84 W. 287.

Order staying foreclosure of mortgage on

No appeal from ex parte voluntary dismissal of action if no motion to vacate order is made, Wilson v. Martin 43 W. 95.  
tender of installment due, appealable, Knissell v. Brunet 60 W. 610.

New trial order is appealable, Doyle v. Great Northern R. Co. 43 W. 558.

Order denying motion to quash summons made on special appearance not appealable, Powell v. Nolan 32 W. 403.

Quashing summons by publication is appealable, Deming Investment Co. v. Ely 21 W. 102.

Discharging jury because of failure to agree is not appealable, Dossett v. St. Paul, etc., Co. 28 W. 618.

Denial of motion for judgment against garnishee is not appealable, Green v. Moore 24 W. 241.

Vacating judgment is not appealable, Greene v. Williams 6 W. 260.

Order overruling motion to vacate order vacating a judgment is not appealable, Hibbard v. Delanty 20 W. 539.

Setting aside default and leave to answer is not appealable, Freeman v. Ambrose 12 W. 1.

Demurrer sustained to an affirmative defense is reviewable with final judgment, Scott v. Hallock 16 W. 439.

Sustaining demurrer to one of several affirmative defenses is not appealable, Old Nat. Bank v. Mining Co. 19 W. 194.

Order striking petition of the State contesting a will is appealable, State ex rel. Stratton v. Tallman 29 W. 319.

Order denying motion to vacate appointment of administrator is appealable, In re Sutton's Estate 31 W. 340.

Order quashing summons with opinion that plaintiff can not prevail though improper is appealable, Embree v. McLennan 18 W. 651.

Order requiring receiver of insolvent corporation to give bond for costs and continuing hearing on debts and claims, appealable, Hosner v. Conservative Cas. Co. 99 W. 161.

— Subd. 7.

State may appeal in disbarment of attorney, State ex rel. Murphy v. Snook 78 W. 671.

State may appeal in criminal case from judgment of dismissal for failure of trial within 60 days, State v. Miller 82 W. 477.

Appeal by state is adequate, certiorari will not lie, State ex rel. Shattuck v. French 82 W. 330.

Subdivision 7 gives state appeal from order in arrest of judgment, State v. Martin 94 W. 313.

Order on administratrix to pay costs or her letters revoked is appealable, In re Richardson's Estate 97 W. 488.

State cannot appeal from acquittal for insufficient evidence—agreement cannot confer jurisdiction, State v. Wright 60 W. 277.

Order vacating leave to sue executor on claim is final, In re Crosby 42 W. 366.

New trial to defendant is not appealable, State v. Johnson 24 W. 75.

Order discharging jury after state has closed case is not appealable, State v. Hubbell 18 W. 482.

Order fixing pay of administrator is appealable, Horton v. Barto 17 W. 675.

Appeal by State will lie in a criminal case, State v. White 8 W. 230.

Setting aside execution levy and sale is appealable, Otis Bros. & Co. v. Nash 26 W. 39.

Refusal to set aside final decree is not appealable, National Christian Ass'n v. Simpson 21 W. 16.

Order quashing execution is not "affected" by order vacating judgment, Sturgiss v. Dart 23 W. 244.

Denial of second petition on same grounds to vacate judgment is not appealable, Wilson v. Seattle Dry Dock Etc. Co. 26 W. 297; Is first one appealable? id.

Order refusing to vacate judgment affirmed is not appealable, State v. Boyce 25 W. 422; exceptions to death warrant is not, id.

Confirmation of receiver's final report and order of distribution is appealable, Chandler v. Shingle Co. 13 W. 89.

Former order denying vacation of judgment is not reversible on appeal from subsequent order denying like motion and asking for rehearing of original motion, State ex rel. Dutch Miller Mining Co. v. Supreme Court 30 W. 43.

Judgment that information in forgery insufficient reversed and trial ordered, State v. Roberts 18 W. 691-92.

#### Generally.

Order adjudging a public use in eminent domain or refusal to vacate order is not appealable—certiorari, North Coast R. Co. v. Gentry 58 W. 80.

Order directing receiver's sale of all the assets of a corporation appealable, Boothe v. Summit Coal Min. Co. 59 W. 610.

Default judgment, defendant not appearing is appealable, In re Sixth Ave. West, Seattle 59 W. 41.

Order adjudging public use in condemnation not appealable, Tacoma v. Nisqually Power Co. 54 W. 292.

Order requiring suit money as condition precedent to hearing petition to vacate fraudulent divorce decree appealable, Pringle v. Pringle 55 W. 93.

Order sustaining a demurrer is not appealable, Zellar v. Siemens 58 W. 116.

Order vacating default is not appealable—finality must appear—certiorari will not lie, Wilson v. McGillivray 58 W. 291.

Order refusing to quash premature peremptory mandamus appealable, *State ex rel. Billings v. Lamprey* 57 W. 84.

Receiver representing creditors may appeal *Pickering v. Richardson* 57 W. 117.

Temporary injunction appealable on stipulation, *Allen & N. Mill Co. v. Vaughn* 57 W. 163.

Order refusing to vacate judgment and grant new trial not appealable, *Lefever v. Blattner* 57 W. 637.

Order dismissing part of defendants not appealable, *Hays v. O'Brien* 56 W. 67.

Order for inspection of papers not appealable, *State ex rel. Seattle General Contracting Co. v. Superior Court* 56 W. 649.

Dismissal of contempt proceedings seeking award of damages appealable, *State ex rel. Nicomen Bolsom Co. v. North Shore etc. Co.* 55 W. 1.

Order directing execution of deed pursuant to divorce decree appealable, *Lowe v. Lowe* 53 W. 50.

Order adjudging person in contempt appealable, *Drainage District v. Costello* 53 W. 67.

Vacation of ex parte order of reappointment of trustee claiming he had resigned through fraud is not appealable, *In re Sinclair's Estate* 44 W. 119.

Interpleader appealable regardless of amount, *Agnew v. Barto* 48 W. 66.

Appeal will not lie in condemnation of county road by county, *Whatcom County v. Yellow Kanim* 48 W. 90.

Unless insolvency shown order denying temporary injunction not appealable, *Masero v. Campbell & Co.* 52 W. 551.

Order dismissing complaint for failure to amend appealable, *Rayburn v. Abrams* 52 W. 414.

Order refusing voluntary dismissal not appealable, *State ex rel. Korsstrom v. Superior Court* 48 W. 671.

Final judgment is judgment reduced to writing, *Robertson v. Shine* 50 W. 433.

Giving of execution stay bond does not prevent appeal, *Hampton v. Buchanan* 50 W. 39.

Order quashing writ of restitution forcible entry and detainer appealable, *State ex rel. Wilkeson Coal etc. Co. v. Superior Court* 49 W. 203.

Purchaser at tax sale may appeal from vacation of foreclosure though not a party to action, *Pierce County v. Bunch* 59 W. 99.

Intervener whose answer is denied and introduces no evidence his interest being adverse to defendant can have no benefit from appeal *Reiff v. Coulter* 47 W. 678.

Receiver's report and discharge appealable *Johnson v. Joslyn* 47 W. 531.

Order vacating ex parte appointed receiver not appealable, *Libert v. Unfried* 47 W. 182.

Sheriff enjoined from selling property under execution has interest to appeal, *Heintz v. Brown* 46 W. 387.

Order permitting filing of amended complaint not appealable, *Alkin v. Seattle Elec. Co.* 46 W. 420.

Order sustaining demurrer to complaint in intervention and refusal to permit amendment not appealable, *Seattle & Nor. R. Co. v. Bowman* 46 W. 90.

Order denying motion for new trial not appealable, *Sound Inv. Co. v. Fairhaven Land Co.* 45 W. 262.

Order dismissing claim for specific property against receiver appealable, *Sumner Iron Wks. v. Wolten* 61 W. 689.

Unsuccessful plaintiff a lienor for taxes cannot assert claim when not presented below, *Holly Street Land Co. v. Beyer* 48 W. 422.

Railroad commission may appeal from review by superior court, *State ex rel. Great N. R. Co. v. R. R. Com'n* 60 W. 218.

Insolvency of defendant necessary for appeal from denial of temporary injunction, *Morrison v. Bernot* 58 W. 302.

Order vacating prior order dismissing contest of will and ordering dismissal of petition is appealable—appeal is from second order, *In re Sullivan's Estate* 40 W. 202.

Order in garnishment is appealable, *Tatum v. Geist* 40 W. 575.

When order vacating judgment or quashing service appealable, *Tatum v. Geist* 40 W. 575.

When order vacating judgment not appealable, *Sengfelder v. Powell-Sanders Co.* 40 W. 686.

Plaintiff having appealed defendant, claiming error, must appeal, *Whiting v. Doughton* 31 W. 327.

Case must be tried on same theory as below, *Standard Furniture Co. v. Anderson* 38 W. 582.

Appeal will not lie from order regarding costs, *Smith v. Palmer* 38 W. 276.

Default judgment must be moved against before appeal will lie, *Walton v. Hartman* 38 W. 34.

Appeal will not lie from review of justice of the peace by superior court if amount less than \$200, *State ex rel. Bassett v. Treasure* 39 W. 198.

Refusal to vacate order of default is not appealable, *Jordan v. Hutchinson* 39 W. 373.

Order construing will on petition to sell lands to pay debts is appealable, *In re Barker's Estate* 33 W. 79.

Appeal lies from order vacating deficiency judgment, *State ex rel. Twigg v. Superior Court* 34 W. 643.

Order vacating judgment and granting new trial is not appealable, *Post v. Spokane* 35 W. 114.

Witnesses are not parties to action and cannot appeal from order disallowing fees, *State v. Fair* 35 W. 127.

Motion for judgment on special verdict and motion for new trial, former denied and latter granted, former cannot be insisted on on appeal, *McInnes v. Sutton* 35 W. 384.

Order vacating judgment setting aside tax deed and allowing redemption is appealable, *Nolan v. Arnot* 36 W. 101.

Order assessing stockholders on super-added liability is appealable and stockholders may appeal though not nominal parties, *Bennett v. Thorne* 36 W. 253; affirmed, *Pacific Coast Coal Co. v. Esary* 85 W. 448.

Order sustaining a demurrer is not appealable, *State ex rel. Small v. Fleming* 37 W. 531.



Sureties may be heard as to costs thought appeal dismissed—equity case—jurisdiction must appear on face of record, *Trumbull v. Jefferson County* 37 W. 604.

Appeal lies from order discharging prisoner in habeas corpus, *In re Garfinkle* 37 W. 650.

No appeal from default judgment without motion to set aside, *Macy v. Sullivan* 41 W. 564.

Order striking complaint from files because causes of action not separately stated is not appealable, *Vaktaren Pub. Co. v. Pacific Tribune Pub. Co.* 41 W. 355.

Opportunity must be given trial court to correct error or irregularity if matter has not been regularly heard and determined before appeal will lie, *State ex rel. Hennesy v. Huston* 32 W. 154.

Order opening default on void service by publication is not appealable, *Thompson v. Robbins* 32 W. 149.

Party must be active party in lower court to be entitled to appeal, *Nicol v. Skagit Boom Co.* 12 W. 230.

Parties at hearing can not appeal from order refusing to vacate receiver's sale, *Id.*

State can not appeal in divorce cases, *Lee v. Lee* 19 W. 355.

Consent of respondent can not give jurisdiction, *Seattle L. S. & E. Ry. v. Simpson* 19 W. 628.

Order directing party to re-instate the other after reversal of judgment is not appealable, *First Nat. Bank v. Carter* 10 W. 11.

Irregular or void order will be reversed on appeal, *Shepard v. Guisler* 10 W. 41.

If appeal is inadequate writ of review is proper remedy or review may be had if there is no appeal, *State ex rel. Smith v. Superior Court* 26 W. 278.

After judgment affirmed on appeal insanity of defendant is alleged court may examine into question without regular trial and such proceeding is not appealable, *State v. Nordstrom* 21 W. 403.

Failure of respondent to give notice of application for restraining order can not be used by him to defeat appeal, *Rockford Watch Co. v. Rumpf* 12 W. 647.

Order sustaining demurrer is not appealable, *Mason County v. Dunbar* 10 W. 163.

Order sustaining demurrer is not appealable, *Padley v. Gregg* 26 W. 322.

Order quashing summons is appealable, *Carstens v. Lehigh Etc. Lumber Co.* 18 W. 450.

Order granting voluntary dismissal by plaintiff after decree had been set aside is appealable, *Dane v. Daniel* 28 W. 155.

Order denying vacation of judgment is appealable, *Wilson v. Seattle Dry Dock Co.* 26 W. 297.

Order refusing to vacate a judgment is appealable, *In re Lamon's Estate* 29 W. 294.

Acceptance of part satisfaction of judgment will not defeat appeal, *Duggan v. Smith* 27 W. 702.

Demurrer to answer can not be interposed for first time in Supreme Court, *Wilson v. Aberdeen* 25 W. 614.

Order sustaining demurrer to complaint asking temporary injunction is appealable, *Peters v. Lewis* 28 W. 366.

Order dismissing petition to vacate

judgment is appealable, *Peyton v. Peyton* 28 W. 278.

Order denying motion to quash execution is appealable, *Hewitt v. Root* 31 W. 312.

After will revoked and appeal by executor such executor may appeal from order appointing general administrator, *State ex rel. Richardson v. Superior Court* 28 W. 677.

Adequacy of remedy by appeal in seeking extraordinary writs is not affected by delay, annoyance and expense, *State ex rel. Carrau v. Superior Court* 30 W. 700.

Order denying petition of attorney for fees in probate is not appealable, the same should be passed on in accounting, *Nash v. Wakefield* 30 W. 556.

One made a party to an action can not be denied appealable interest, *State ex rel. Race v. Cranney* 30 W. 594.

State can not appeal where defendant discharged on habeas corpus and in preliminary examination, *State v. Murray* 30 W. 383.

Order sustaining demurrer of one defendant is appealable if the other defendants have not been served, *Lough v. John Davis & Co.* 30 W. 204.

Defendant's new trial reversed he may appeal from other grounds, *Gray v. Washington Water Power Co.* 30 W. 154.

Plea of guilty in criminal case is not waiver of appeal, *State v. Blanck* 10 W. 292.

Order denying injunction is appealable if defendants insolvent, *Colby v. Spokane* 12 W. 690.

Order fixing compensation of assignee of bank is appealable, *Slater v. Stevens County Bank* 12 W. 488.

Case must be disposed of as to all the parties before appeal will lie, *Fairfield v. Binnian* 13 W. 1.

Without appeal party can not be heard to question judgment of trial court, *Langer v. David* 14 W. 389.

Respondent must appeal to urge errors, *Glenn v. Hill* 11 W. 541.

Order adjudging creditors prior to mortgagee in railroad receivership is appealable, *Radebaugh v. Tacoma Etc. Ry.* 8 W. 570.

Judgment directing proceeds to be divided equally and one party has execution it will not defeat appeal on question of priority, *Miller v. Washington Savings Bank* 5 W. 200.

Order setting aside default is not appealable, *Freeman v. Ambrose* 12 W. 1.

Dismissal of action as to party claiming title paramount to mortgagee in foreclosure is appealable, *Pennsylvania Mtge. Co. v. Gilbert* 13 W. 684.

Order requiring assignee in insolvency to report and distribute assets is appealable, *Anderson v. Risdon-Cahn Co.* 13 W. 494.

Order postponing default until next day is not appealable, *Schlotfeldt v. Bull* 13 W. 242.

Order granting motion to strike substantive facts from complaint is appealable, *Snohomish County v. Ruff* 15 W. 637.

Order granting new trial when motion was made by both parties is not appealable, *Clallam County v. Cump* 15 W. 593.

Order dismissing disbarment proceedings against attorney is not appealable by petitioner, *In re Ault* 15 W. 417.

Order vacating dismissal of action is not appealable, *Hart Lumber Co. v. Rucker* 17 W. 600.

Where complaint has been dismissed before all defendants were served appeal will lie, *Keef v. Tibbals* 18 W. 656.

Order for maintenance of widow from estate of husband and former wife is appealable when it supersedes former order not appealed from, *In re Cannon's Estate* 18 W. 101.

Judgment by default is appealable on sufficiency of complaint, *Rhode Island Mort. Co. v. Spokane* 19 W. 616.

Order overruling motion to quash summons is not appealable, *Prussion Ins. Co. v. Northwest Etc. Ins. Co.* 19 W. 281.

Appeal lies from judgment remanding prisoner on habeas corpus, *In re Baker* 21 W. 259; *In re Sylvester* 21 W. 263.

Court has no jurisdiction of case dismissed in court below for failure to file amended complaint after demurrer sustained, *Hall v. Skavdale* 21 W. 203.

Error will be presumed prejudicial, *Lillie v. Shaw* 22 W. 234.

Temporary injunction dissolved on final hearing appeal will not lie, *Watkins v. Dorris* 24 W. 636.

Order sustaining general demurrer is appealable, *Van Horne v. Watrons* 10 W. 525.

Order granting non-suit is appealable, *DeGraf v. Seattle Etc. Nav. Co.* 10 W. 468.

Judgment must dispose of all of the defendants to action before it is appealable, *Johnson v. Lighthouse* 8 W. 32.

Ward may appeal from order requiring him to pay money regardless of funds in his hands, *In re Hill's heirs* 7 W. 421.

Judgment dismissing action for want of prosecution is not appealable *Pacific Supply Co. v. Brand* 7 W. 357.

Order vacating judgment is not appealable, *Nelson v. Denny* 26 W. 327; *Metler v. Metler* 28 W. 734.

Order fixing day of execution is not appealable, *State v. Seaton* 27 W. 120.

**§7291. Title of Cause—Designation of Parties.** §2. The party appealing shall be known as the appellant, and the adverse party as the respondent, and they shall be so designated in all papers in the cause after the notice of appeal shall have been given or served; but the title of the cause shall in other respects remain unchanged.

Want of proper description of parties is not fatal, *In re Alfstad's Estate* 27 W. 175.

**§7292. Time of Taking Appeal.** §3. In civil actions and proceedings, an appeal from any final judgment must be taken within ninety days after the date of the entry of such final judgment; and an appeal from any order, other than a final order, from which an appeal is allowed by this act, within fifteen days after the entry of the order, if made at the time of the hearing, and in all other cases within fifteen days after the service of a copy of such order, with written notice of the entry thereof, upon the party appealing, or his attorney. In criminal causes, an appeal must be taken within ninety days after the entry of final judgment. L. '15 300, L. '13 ch 116, R.& B. §1718.

Nonsuit granted, with minute entry, time runs from formal judgment, *Barth v. Harris* 95 W. 166.

Time runs from formal judgment, *Rupe v. Kemp* 99 W. 371.

Garnishment appeals in 90 days—nature of action, *Morris & Co. v. Canadian Bank, etc.* 95 W. 418.

Time runs from judgment not from order denying motion seeking to correct judgment, *Codd v. Von Der Ahe* 92 W. 529.

Temporary alimony, etc., appealable in ninety days, *State ex rel. Surry v. Superior Court* 74 W. 689.

Party not having right to appeal cannot curtail time to others by giving notice, *Carstens & Earles v. Seattle* 84 W. 88.

Cross appeal in ninety days, *Kennedy v. Mellicke Calculator Co.* 90 W. 238.

Time runs from entry by clerk of order denying motion for new trial, *Woody v. Seattle Elec. Co.*, 65 W. 539.

Loss of record extends time, §7784.

Time cannot be extended by amendments, §8459.

Corrected judgment time runs from last entry—notice in time, *Jemo v. Tourist Hotel Co.* 55 W. 595.

Time begins to run from denial of motion for new trial, *Mercer v. Lloyd Trans-*

*fer Co.* 59 W. 560.

Time runs from denial of motion for new trial, *O'Brien v. American Casualty Co.* 57 W. 598.

Fifteen days for appeal from order discharging garnishee—orders on some of which limitation has run—Involuntary dismissal of principal action does not defeat appeal from incidental proceedings dismissed by appellant *Loveday v. Parker* 50 W. 260.

Order dismissing petition to vacate judgment for fraud appealable in 90 days, *Kath v. Histogenetic etc. Co.* 50 W. 454.

Runs from denial of motion for new trial, *Wittler Corbin Mach. Co. v. Martin* 47 W. 123.

Time may be fixed by stipulation—appeal not in time dismissed, *Jones & Co. v. Spokane Val. L. & W. Co.* 44 W. 146.

Time runs from entry of judgment, appellant charged with notice, *Lindsay v. Seattle* 56 W. 206.

Limitation on appeal in independent action to set aside tax foreclosure, ninety days, *Gould v. Knox* 53 W. 248.

Successful party entering judgment is estopped from asserting that such entry was the final entry limiting time, *Herzog v. Palatine Ins. Co.* 36 W. 611.



Appeal from order denying vacation of judgment in tax foreclosure limited to 30 days, *Brown v. Davis* 36 W. 135.

Time from motion for new trial, *Hill v. Gardner* 35 W. 535.

Time begins to run when motion for new trial is determined, *State ex rel. Payson v. Chapman* 35 W. 64.

Time of appeal begins to run from entry of judgment, though no notice of findings and judgment was given, *Fisher v. Puget Sound Etc. Co.* 34 W. 578.

Time of appeal begins to run from date of order denying motion to vacate judgment irregularly entered dismissing an action, *Hennessy v. Tacoma etc. Co.* 32 W. 423.

Order correcting judgment by dismissing parties does not extend time of appeal, *Schultz v. Oregon R. & N. Co.* 41 W. 614.

Judgment agreed to be considered as not entered until motion heard time of appeal does not run, *Prospector's Dev. Co. v. Brooke* 32 W. 315.

Time begins to run from actual notice of entry of order in short time appeals, *Donison v. Spokane* 27 W. 317.

Appeal from exceptions to receiver's report of sale is short time appeal, *Nicol v. Skagit Boom Co.* 12 W. 230.

Actual notice of entry of order is as

**§7293. Notice of Appeal—Bond.** §4. A party desiring to appeal to the supreme court under the provisions of this act may, by himself or his attorney, give notice in open court, or before the judge, if the judgment or order appealed from is rendered or made at chambers, at the time when such judgment or order is rendered or made, that he appeals from such judgment or order to the supreme court, and thereupon the court or judge shall direct the clerk to make an entry of such notice in the journal of the court. If the appeal be not taken at the time when the judgment or order appealed from is rendered or made, then the party desiring to appeal may, by himself or his attorney, within the time prescribed in section three of this act, serve written notice on the prevailing party or his attorney that he appeals from such judgment or order to the supreme court, and within five days after the service of such notice he shall file with the clerk of the superior court the original or a copy of such notice, with proof or the written admission of the service thereof, and thereupon the clerk shall enter such notice, with the proof or admission of service thereof, in the journal of the court. The giving or service of a notice of appeal as prescribed in this section shall effect the appeal, but the same shall become ineffectual if an appeal bond for costs and damages be not given as required by section six of this act. Two or more appealable orders, with or without the judgment, may be embraced in one appeal, provided, the time allowed in this act for appealing from each of such orders has not expired. The appellant in his notice of appeal shall designate with reasonable certainty from what judgment or orders, whether one or more, the appeal is taken, and if from part of any judgment or order, from what particular part.

Waiver of rights against sureties dispenses with notice of appeal, *Zuhn v. Horst* 100 W. 359.

Notice of appeal to assignee of judgment not necessary, *Wright v. Seattle Grocery Co.* 101 W. 266.

Failure to serve notice on sureties on respondents cost bond not fatal because rights against sureties waived, *Armstrong v. Spokane International R. Co.* 101 W. 525.

Notice not necessary to creditors in probate with claims less than \$200, *In re Ennis' Estate* 96 W. 352.

effective as service of copy of order to limit short time of taking appeal, *Braely v. Marks* 13 W. 224.

Appeal taken under former law effective, *Brookman v. State Ins. Co.* 15 W. 29.

Time runs on final judgments from entry whether notice is given or not; on orders from hearing or notice of appeal given or from notice of entry of order, *National Christian Association v. Simpson* 21 W. 16; *Otis Bros. v. Nash* 26 W. 39.

Time runs from notice of entry of order appealed from, *Debenture Corporation v. Warren* 9 W. 312.

Time of appeal—filing notice and bond are jurisdictional, *Hibbard v. Delanty* 20 W. 539; *Van Dusen v. Kelleher* 20 W. 716; *Cole v. Price* 22 W. 18.

Judgment announced but not signed and entered will sustain notice of appeal, *Hays v. Dennis* 11 W. 360.

Appeal from order denying motion to quash execution taken on fifteenth day is in time, *Hewitt v. Root* 31 W. 312.

Appeal in criminal case must be taken within ninety days, *State v. Symes* 17 W. 596.

Appeal runs from judgment rather than corrected judgment, *Agassiz v. Kelleher* 11 W. 88.

Cited 76 W. 291.

Notice of appeal from "order denying a had in said cause" insufficient notice of appeal from final judgments in cause—no amendment, *Carlson v. Vashon Nav. Co.* 102 W. 75.

Bond not signed by wife of one appellant not objected to below, sufficient, *Dibert v. Petersen* 83 W. 479.

In proceeding to set aside attorney's lien notice to parties interested in fund not necessary, *Gust v. Judd* 88 W. 536.

Sheriff holding property is not necessary party to appeal—notice to parties in consolidated action not necessary, *Kato v.*

Union Oil Co. 91 W. 302.

Notice to sureties on plaintiff's cost bond not necessary if rights against them waived, *Roberts v. Pacific T. & T. Co.* 93 W. 233; *Langley v. Devlin* id 236.

Notice served after signing, before entry, and filed after entry of judgment is sufficient, *Templeton v. Warner* 89 W. 584.

Cross-appeal bond must be filed in five days, *Bremerton v. Bremerton W. & P. Co.* 88 W. 362.

Appeal from judgment on complaint, dismissal of cross-complaint will not be considered, *Stewart v. Larkin* 74 W. 681.

Two judgments only one in notice other cannot be considered, *Winton Motor Carriage Co. v. Blomberg* 84 W. 451.

Bond insufficient appeal dismissed but court cannot affirm judgment — costs against appellant but not against bond, *Jones & Co. v. Cunningham* 79 W. 4.

Oral notice is open court good, *Benjamin v. Ernst* 83 W. 59.

Only one notice is required on appeal from two judgments in quo warranto, dismissing the proceeding as to separate defendants, *State ex rel. Powell v. Fassett*, 69 W. 555.

Notice only to parties claiming deposit in condemnation, *Nor. Pac. R. Co. v. Smith*, 68 W. 269.

Notice must be given assignee, *Robertson Mtg. Co. v. Thomas*, 63 W. 316.

Notice of appeal from refusal to vacate judgment cannot be amended to appeal from judgment, *State v. Tenney*, 63 W. 486.

Party pleading in nature of disclaimer, notice not necessary, *Soderberg v. McRae*, 67 W. 104.

Service of notice may be shown by supplemental record, *Spring Hill Irr. Co. v. Lake Irr. Co.* 42 W. 379.

Notice and statement of facts need not be served on party dismissed by appellant, *Sheehan v. Bailey Building Co.* 42 W. 535.

Oral notice in open court entered in minutes is good, *Creech v. Aberdeen* 42 W. 77.

Notice at time motion for new trial overruled is good though judgment has been entered id.

In proceedings after judgment only interested parties should be served, *Exposition Amusement Co. v. Raeco Products Co.* 55 W. 314.

Notice to garnishee only in appeal from judgment in his favor, *Iverson v. Bradrick* 54 W. 633.

Trustee to hold property for children, who did not appear, notice not necessary, *Lowe v. Lowe* 53 W. 50.

Oral notice of appeal from judgment given at denial of new trial is insufficient, *Lefever v. Blattner* 57 W. 637.

Oral notice of appeal in open court other party absent held good, *Carlson v. Curren* 48 W. 249.

Appeal from a portion of a decree expressly authorized, *State ex rel Holcomb v. Yahey* 48 W. 419.

Oral notice at time new trial denied good but not if at time of entry of judgment, *Chilcott v. Globe Nav. Co.* 49 W. 302.

Oral notice and bond filed and second written notice given, appeal sustained, *Ayars v. O'Connor* 45 W. 132.

Corporation appearing in record as apparently different corporations will be

sumed one and the same for notice of appeal, *Beebe v. Northwestern Dairy Co.* 61 W. 294.

Notice filed before service is good, *Lawyer Land Co. v. Steel* 41 W. 411.

Oral notice of appeal in open court is good to surety on bond to discharge attachment, *Brady v. Onffroy* 37 W. 482.

Notice must be filed within five days after service—service of unnecessary parties is no service, *Collins v. Kinnear* 37 W. 453.

Notice omitted "to the supreme court" held good, *Van Devanter v. Flaherty* 37 W. 218.

Party "had appealed" instead of "appeals" is good, *James v. James* 35 W. 655.

Notice to sureties on cost bond is necessary if judgment against them, *Aetna Ins. Co. v. Thompson* 34 W. 610.

Notice of "application to appeal" is good, *Brown v. Calloway* 34 W. 175.

Notice not necessary to sureties on cost bond in superior court *O'Connor v. Lightizer* 34 W. 152.

Notice that "final judgment" is appealed from is good, *Horrell v. California etc. Ass'n* 40 W. 531.

Judgment designated as entered on the 20th of March it having been entered on the 21st is sufficient, *O'Neill v. Ternes* 32 W. 528.

Designating some of the parties as "et al" is sufficient, *Philadelphia Mort. & Tr. Co. v. Palmer* 32 W. 455.

Notice to intervenors is necessary even if they have dismissed action subsequent to appeal, *Old National Bank v. Mining Co.* 19 W. 194.

Garnishee not entitled to bond in appeal against defendant, *Seattle Trust Co. v. Pitner* 17 W. 365.

Not necessary to serve bond or notice of its filing, *Home Savings Etc. Co. v. Benton* 20 W. 688; *De Roberts v. Stiles* 24 W. 611.

Notice need not include interlocutory orders, *Bingham v. Keylor* 25 W. 156.

Notice of appeal from final judgment also order is sufficient as to order, *Thompson v. Sims* 18 W. 359.

Proof of service need not state time and place of service, *Sackman v. Thomas* 24 W. 660.

Service of notice by new attorney is good, *Belle City Mfg. Co. v. Kemp* 27 W. 111.

Notice to attorney for respondent is notice to attorney himself, *Home Savings Etc. v. Burton* 20 W. 688.

Notice must be served on all parties who do not join, *Smith v. Beard* 21 W. 204.

Notice not filed in time appeal will be dismissed, *State v. Butler* 19 W. 110.

Notice need not be given to party who has not appeared, *Eldridge v. Stenger* 19 W. 697.

Notice served and filed the same day will be presumed served before filed, *Yakima Water Co. v. Hathaway* 18 W. 377.

Proof of service must appear in record, it can not be shown by affidavit, *Fairchild v. Binnian* 13 W. 1.

Notice by attorney for all defendants is order refusing to vacate judgment and not sufficient, *Ramsay v. Tacoma Land Co.* 31 W. 351.



Notice held sufficient to review only orders prior thereto, *Norris v. Campbell* 27 W. 654.

Notice in criminal case given after denial of motion for new trial and before judgment will be dismissed, *State v. Landes* 26 W. 325.

Notice to parties who have not appeared is unnecessary, *Home Savings v. Burton* 20 W. 688.

Notice must be given in time but bond may be filed afterward, *Asher v. Sekofsky* 10 W. 378; *Shannon v. Mining Co.* 24 W. 119.

Notice to attorney of all prevailing parties but address to him as attorney for one of them is sufficient, *In re Murphy's Estate* 26 W. 222.

Notice to one member of firm of attorneys is good if the other dead. Notice directed to an attorney and his wife

served on him whether he has appear for both is good; proof of service must be filed in five days but if co-parties with appellant may be filed subsequently. *Howard v. Shaw* 10 W. 51.

Notice applying to judgments at chambers is good if given on day of judgment ordered entered though findings are antedated, *Northern etc. Trust v. Hinder*, 12 W. 559.

Notice and bond are sufficient, though it states wrong day of entry of judgment when it was only judgment, *Shannon v. Mining Co.* 24 W. 119.

Notice giving date of judgment etc. held sufficient, *Roberts v. Ry. Co.* 21 W. 427.

It was manifest from record that notice was given but clerk entered "intended to appeal," held good notice, *Ranahan v. Gibbons* 23 W. 255.

**§7294. Joinder of Parties—Service of Notice.** §5. All parties whose interests are similarly affected by any judgment or order appealed from may join in the notice of appeal; whether it be given at the time when such judgment or order is rendered or made, or subsequently; and any such party who has not joined in the notice may, at any time within ten days after the notice is given or served, serve an independent notice of like appeal, or join in the appeal already taken by filing with the clerk of the superior court a statement that he joins therein, or in some part thereof, specifying in what part. Any such party who does not so join shall not derive any benefit from the appeal unless from the necessity of the case; nor can he independently appeal, from any judgment or order already appealed from, more than ten days after service upon him of written notice of the former appeal, unless such former appeal be afterwards dismissed. All parties who so join in an appeal after the notice is given or served shall be liable for the expenses thereof, and for costs and damages, to the same extent and upon the same conditions as if they had originally joined in the notice. When the notice of appeal is not given at the time when the judgment or order appealed from is rendered or made, it shall be served, in the manner required by law for the service of papers in civil actions and proceedings, upon all parties who have appeared in the action or proceeding: Provided, That where the record and files in the cause do not disclose the address of a party on whom service should be made or of his attorney, and neither such party nor his attorney can be found within the county in which the judgment or order appealed from was rendered or made (of which fact a return by the sheriff that they cannot be so found shall be proof), the notice of appeal need not be served on such party, but the appeal may be taken by filing the notice, and such sheriff's return, with the clerk. Service on an attorney who was the attorney of record for a party in the cause at the time when the judgment or order appealed from was rendered or made shall be deemed service on such party, in all cases where service is required by this act.

Co-parties must be served—notice to legatees required, *In re Myhrens Estate* 95 W. 101.

Service of papers §7228p.

Co-contestants of will not joining in appeal must be served—verbal waiver after time for notice void, *McKay v. Stephens* 81 W. 306.

All appeals limited to 90 days—timely service of notice cannot be waived, *Mottet v. Stafford* 94 W. 572.

Party not having right cannot curtail time by giving notice, *Carstens & Earles v. Seattle* 84 W. 88.

Codefendant must join in appeal within 10 days, *Peck v. Peck* 76 W. 548; *Long Bell Lum. Co. v. Gaston* 78 W. 598.

"Necessity" is absolute necessity, *For-*

*gan v. Williams* 77 W. 343.

Notice must be served on surety on claim and delivery bond with judgment against him, *Long Bell Lumber Co. v. Gaston* 78 W. 598; affirmed, *Shippen v. Shippen* 91 W. 610.

Codefendant must join or take appeal within ten days, *Johnson v. Seattle T. & T. Co.* 85 W. 551.

Notice only to those appearing in order for receiver's distribution, *Jensen v. Angeles Br'g & Mlt'g Co.* 87 W. 392.

Notice must be served on surety on cost bond nonresident plaintiff, *Shippen v. Shippen* 91 W. 610.

Appeal from order in receivership directing sale to satisfy creditors, notice not served on petitioner, appeal dismissed,

Crawford v. Seattle, Renton & S. R. Co. 92 W. 670.

Bonds by surety companies, §493.

Bond conditioned to stay, property shall be released and execution returned, §7303.

Stay in certiorari, §7422.

Stay without appeal, §7921.

Codefendant in action of tort not appealing can not have benefit of reversal obtained by others appealing, Shreeder v. Davis 43 W. 129.

In consolidated actions one appeal by all parties, O'Connor v. Force 58 W. 215.

Respondent can not get more favorable judgment without cross appeal, Koschnitsky v. Hammond Lumber Co. 57 W. 320.

Not necessary in equity case when, Huntington v. Love 56 W. 674.

Party appearing by stipulation and defaulting must be served, Robertson Mtg. Co. v. Thomas 60 W. 514.

Service of notice by appellant on successful codefendant not necessary—same attorneys, Sipes v. Puget Sound Elec. R. Co. 50 W. 585; different attorneys, Wilson v. P. S. E. R. Co. id. 596.

Need not be given to parties not appearing in court below, McDougall v. Bridges 52 W. 396.

Consolidated actions one notice and bond only—no notice to party in default, First Nat. Bank v. Fowler 51 W. 638.

Heirs making exception to final account must be given notice of appeal, Beckman v. Brommer 57 W. 436.

In vacation of judgment only the parties thereto need be served, Collins v. Kinnear 37 W. 453.

Stockholder sues corporation and obtains temporary injunction, other stockholders intervene and appeal from order refusing to dissolve injunction, held notice must be given corporation, Willard v. Fisher 36 W. 229.

Service on sureties on redelivery bond was proved by their acceptance witnessed and affidavit of service, held good, Hill v. Gardner 35 W. 529.

Admission of service over one's signature is good, the court taking judicial notice of signatures of parties to action, Fisher v. Rutledge 35 W. 285.

Service on assignee of judgment not necessary—assignee will be substituted, Curren v. Seattle etc. Co. 34 W. 512.

Notice not necessary to sureties of distributees in probate—notice by guardian and litem—unnecessary party in notice not joining in bond, Noble v. Whitten 34 W. 507.

Notice not necessary to sureties on non-resident's cost bond, Wagner v. Royal 36 W. 428.

Notice must be served on co-defendant, Wax v. Northern Pac. Ry. 32 W. 210.

Party can not join appeal by joining in the bond. notice being necessary, Winters v. Grays Harbor Boom Co. 19 W. 346.

Sureties on bond to claim property from levy should have notice, naming them in the body of the notice is sufficient, Carstens v. Gustin 18 W. 90; 27 W. 728.

Notice must be served sureties on cost bond, Pierce v. Commercial Inv. Co. 31 W. 655.

Appeal will be dismissed if all parties are not served, Johnson v. Lighthouse 8 W. 32.

Defendant who has not appeared need not have notice, Essency v. Essency 10 W. 375.

Notice in open court is sufficient, Seattle v. Liberman 9 W. 276.

Notice must be given a receiver, Pacific Coast Trading Co. v. Bellingham Bay B. B. Ass'n 18 W. 245.

If some of the parties are not served party may join in another appeal and perfect service, Watterson v. Masterson 15 W. 511.

Notice need not be served on party answering after notice has been given, Snohomish County v. Ruff 15 W. 637.

One notice to attorney representing several parties is sufficient, Hendricks v. Edmiston 15 W. 687.

Parties can not waive notice, Sawtelle v. Weymouth 14 W. 21. 87.

Party to action of foreclosure disclaiming interest need not be served with notice, Watson v. Sawyer 12 W. 35.

Notice must be served by intervenor in foreclosure on all parties though they had not appeared at time error occurred, Hinchman v. Point Defiance Ry. 14 W. 171.

Service on receiver is service on creditors he represents, Radebaugh v. Tacoma etc. Ry. 8 W. 570.

Service on attorney of record if no showing of substitution is sufficient, Tacoma Mill Co. v. Sherwood, 11 W. 492.

Co-defendant admitting complaint but not disclaiming interest must be served with notice, First Nat'l Bank v. Gordon Hdw. Co. 31 W. 682.

Party disclaiming interest need not be served with notice; notice "directed" only to parties prevailing; service on attorney himself, Smalley v. Langenour 30 W. 307.

Notice need not be given to party appearing only to disclaim interest, First Nat'l Bank v. Gordon Hdw. Co. 30 W. 127.

Separate notice not required in each case where judgment is given separately for several defendants, Clark v. Eltinge, 29 W. 215.

All parties must give both notice and bond, Stans v. Baitey 9 W. 115. 679.

Notice must be served on all co-parties not joining although appellant and those not giving represented by same attorney, Casey v. Oaks 13 W. 38; Sealy v. South Side Land Co. 11 W. 210.

Parties subsequently joining must file bond, Stans v. Baitey 9 W. 115.

Service must be had on all the parties who have appeared—return of sheriff must be had before clerk can be served—service for certain defendant will not be notice to others for whom he appears—in consolidated cases service must be complete as to both, Cornell University v. Denny Hotel Co. 15 W. 433.

Adverse party can not join in appeal—more than one appeal in equity case, Blair v. Brown 17 W. 573.

Service may be made by mail, De Roberts v. Stiles 24 W. 611.

Two appeals can not be taken by same party in equity case, Hill v. Sawyer 14 W. 275.



Where appeal has been taken from decree by some of the parties, others must join or appeal within ten days, Griffith v. Seattle Nat'l Bank etc. Co. 16 W. 329.

**§7295. Bond Must Be Filed—Exceptions.** §6. An appeal in a civil action or proceeding shall become ineffectual for any purpose, unless at or before the time when the notice of appeal is given or served, or within five days thereafter, an appeal bond to the adverse party, conditioned for the payment of costs and damages, as prescribed in section seven of this act, be filed with the clerk of the superior court, or money in the sum of two hundred dollars be deposited with the clerk in lieu thereof. But no bond or deposit shall be required when the appeal is taken by the state, or by a county, city, town or school district thereof, or by a defendant in a criminal action.

Bond before notice of appeal sufficient, Singer v. Metz Co. 101 W. 67.

Creditor's contesting claims in insolvency, bond running to receiver, appeal will be dismissed, Salvino v. Taylor Mill Co. 102 W. 507.

Bond must be in favor of parties against whom appeal taken, Mogelberg v. Calhoun 94 W. 662.

Nonresident's cost bond does not cover costs on appeal, State ex rel. Illinois Surety Co. v. Superior Court 82 W. 361.

Bond not filed in time, appeal dismissed, Heine v. Hall 84 W. 260.

Bond not required in condemnation cases, State ex rel. Washington Public Service Co. v. Superior Court 86 W. 155.

Appeal bond must not include condition as stay bond, Smith v. Porter, 66 W. 349.

Bond to other plaintiff than appellee ineffective, Bruhn v. Steffins, 66 W. 144.

Bond by part of appellants for all, good, Gerlach v. Spokane, 68 W. 589.

Affirmed, Jacoby v. Hollada 78 W. 88.

Respondent cannot urge error in not adding interest to a verdict for damages, in the absence of a cross-appeal with appeal bond, Smith v. Diamond Ice Co., 65 W. 576.

Appeal by mayor and council is appeal by city, Parish v. Collins 43 W. 392.

Time of filing bond jurisdictional—correcting record to show filing, Main Inv. Co. v. Olson 43 W. 480.

Bond without sureties insufficient—dismissal, Wenatchee Orchard etc. Co. v. Thompson 60 W. 643.

Bond not filed because of inadvertence of the clerk is valid, Main Inv. Co. v. Olson 44 W. 121.

Bond running to the state is good, Westland Pub. Co. v. Royal 36 W. 399.

Bond required in appeal by county officer, State ex rel. Smith v. Blumberg 34 W. 640.

No bond necessary in appeal by Civil Service Commissioners, Corbett v. Civil Serv. Com'n 33 W. 190.

If record fails to show filing of bond appellant may have record returned to lower court and show filing, State ex rel. Krutz v. Washington Irrigation Co. 39 W.

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Bond is necessary in habeas corpus, State ex rel. Roberts v. Superior Court 32 W. 143.

Time of filing bond cannot be extended, Hight v. Batley 32 W. 165.

Bond is jurisdictional, Erickson v. Erickson 11 W. 76; additional bond can not be filed after time expired, Galloway v. Hossem 22 W. 103.

Bond in time is jurisdictional, Ramage v. Littlejohn, 16 W. 702; Savage v. Graham 14 W. 323.

Contempt is not criminal action to disburse with bond, State ex rel. Geiger v. Geiger 20 W. 181.

Certificate of clerk that gold coin had been deposited as bond shows good bond though appellant deposited check, In re Sullivan's Estate 25 W. 430.

Assignment of judgment carries appeal bond though assignor retains rights under it by agreement, Lewis v. Third Street etc. Ry. 26 W. 28.

Surety company on bond not having complied with law, appeal will be dismissed, Dodge v. Corliss 27 W. 685.

on merits—mandamus to compel trial,

Bond is not required of public officers in official capacity, Townsend Gas & E. Co. v. Hill 24 W. 469.

Bond signed by attorney for appellant is good, Hill Estate Co. v. Whittlesey 21 W. 142.

If only one bond given in appeal against joint defendants appeal may be dismissed as to one and prosecuted as to the other, Taake v. Seattle 16 W. 90.

Appeal by a city supersedes judgment without bond, Jordan v. Seattle 29 W. 581.

Bond executed by attorney for all defendants is sufficient, Ramsey v. Tacoma Land Co. 31 W. 351.

Bond with parties as sureties is insufficient and if time has expired appeal will be dismissed, David v. Guich, 30 W. 266.

Bond is jurisdictional though appellant is a pauper, Bokien v. State 14 W. 401.

Substantial compliance with the statute requiring bond is sufficient, Anderson v. Bigelow 16 W. 198.

Bond may be filed before appeal is taken, Debenture Corporation v. Warren, 9 W. 312.

**§7296. Bond—Cost and Cost and Stay.** §7. The appeal bond must be executed in behalf of the appellant by one or more sufficient sureties, and shall be in a penalty of not less than two hundred dollars in any case; and in order to effect a stay of proceedings as in this section provided, the bond, where the appeal is from a final judgment for the recovery of money, shall be in a penalty double the amount of the damages and costs recovered in such judgment, and in other cases shall be in such penalty, not less than two hundred dollars, and sufficient to save the respondent harmless from damages by reason of the appeal, as a judge of the superior court shall pre-

scribe. It shall be conditioned that the appellant will pay all costs and damages that may be awarded against him on the appeal, or on the dismissal thereof, not exceeding two hundred dollars. An appeal shall not stay proceedings on the judgment or order appealed from, or on any part thereof, unless the original or a subsequent appeal bond be further conditioned that the appellant will satisfy and perform the judgment or order appealed from in case it shall be affirmed, and any judgment or order which the supreme court may render or make, or order to be rendered or made by the superior court, and (where such condition is applicable) shall pay all rents of or damages to property, accruing during the pendency of the appeal, out of the possession of which any respondent shall be kept by reason of the appeal. If the bond is intended to stay proceedings on only a part of the judgment or order, it shall be varied so as to secure the part stayed alone. When such bond, further conditioned as hereinabove prescribed, has been filed, the appeal shall operate, so long as it shall remain effectual under the provisions of this act, to stay proceedings upon the judgment or order appealed from; but in case of an appeal from an order other than an order granting a new trial, no appeal or appeal bond shall operate to stay proceedings in the cause except proceedings upon the order appealed from; and no appeal or stay shall vacate or affect any part of a judgment or order not appealed from and where an appeal is taken from an order vacating a temporary injunction, the appellant can not proceed further in the cause in the superior court during the pendency of the appeal, except so far as may be rendered necessary by proceedings of an adverse party.

Habeas corpus cannot be superseded, *State ex McGhee v. Court* 99 W. 619.

Supersedeas granted by supreme court where taxpayer's action seeking to prevent county from making contract ultra vires, *Northwestern Imp. Co. v. McNeil* 98 W. 1.

Sureties on bond held on different judgment against sureties—power of superior court—bond joint and several, *Empson v. Fortune* 102 W. 16.

Supersedeas bond supersedes alimony in divorce—is not liable for alimony after bond executed, *Surry v. Surry* 84 W. 269.

Supersedeas bond secures all though part of case reversed—secures alternative judgment, *McFeron v. Fidelity & Deposit Co.* 85 W. 303.

Judgment on supersedeas bond entered against appellant not liable before appeal—subrogation, *Simmons v. Northern Pac. R. Co.* 88 W. 384.

Defective bond sustained objection being first made in supreme court, *Thomas v. Lee* 74 W. 286.

Cost and stay bond slightly less than amount, appeal dismissed, *Michaels v. Levinson* 82 W. 612.

Divorce decree changed on appeal from specific property to money, judgment will be entered against supersedeas bond, *Willson v. Willson* 86 W. 50.

Supersedeas bond not required in condemnation cases, *State ex rel. Washington Public Service Co. v. Superior Court* 86 W. 155.

Profits from subcontracts elements of damage—surety's liability on continuance of injunction, *Mead v. Kalberg*, 70 W. 517.

Stay not necessary in divorce to carry whole case, *State ex Gibson v. Court*, 69 W. 280.

Bond on appeal from contempt judgment should be at least the amount of original judgment, *State ex Sargent v. Court*, 71 W. 495.

Supreme court stayed injunction, *Campbell Lum. Co. v. Deep River Co.*, 68 W. 431.

Does not entitle appellant to a supersedeas in a case affecting the public right, *Cooper v. Hindley*, 70 W. 331.

Interpleader to recover specific deposit in a bank is not money judgment for purposes of bond, *Pierson v. Peirce* 42 W. 164.

Judgment suspending attorney can not be superseded—mandamus will not lie to compel judge to fix bond, *State ex rel. Martin v. Poindexter* 43 W. 147.

Supersedeas required to apply to contested questions appealed from, *Lazier v. Cady* 43 W. 82.

Bond held to supersede whole judgment and sureties liable against contention that only question of priority of liens stayed, *Rogers v. Minneapolis etc. Co.* 48 W. 19.

Executed by surety alone good, *Fidelity etc. Co. v. Seattle R. & R. Co.* 50 W. 391.

Adoptive parents cannot by supersedeas resume custody of children awarded mother, *State ex rel. Davenport v. Poindexter* 45 W. 37.

Bond to stay payments by a receiver on a judgment in such sum as fixed by the court, *Johnson v. Joslyn* 45 W. 310.

No supersedeas in order denying intervention, *Hindman v. Calvin* 46 W. 317.

Two bonds each for \$200, appeal bond being conditioned as supersedeas, dismissed because supersedeas not \$400, *Washington W. P. Co. v. Abacus Ass'n* 49 W. 261.

Bond need not cover interest nor costs of dismissed codefendant, *Waelflen v. Lewiston-Clarkston Co.* 49 W. 405.

Part of decree awarding alimony and property appealable and may be superseded, *State ex rel. Holcomb v. Yakey* 48 W. 419.

Injunction superseded by supreme court, *Lund v. Idaho etc. R. Co.* 48 W. 453.

Injunction superseded when public chiefly in interest, *Bilger v. State* 60 W. 454.

Order directing receiver's sale of all the assets of corporation superseded—man-



*damus. Boothe v. Summit Coal Min. Co.* 59 W. 610.

Not granted in appeal from habeas corpus, *State ex rel. Hamilton v. Superior Court* 56 W. 91.

Stay bond in orders of railroad commission is mandatory, *State ex rel. Puget Sound E. R. v. Mitchell* 60 W. 660.

Bond for stay good though court should have fixed amount, *Barton v. Wickizer* 41 W. 293.

Amount of appeal bond, \$200. written and stay conditions printed, bond used as appeal bond only, held good as such, *Douglas v. Badger State Mine*, 41 W. 266.

Judgment in part other than payment of money court must fix bond, *Macy v. Sullivan* 41 W. 564.

In interpleader supersedeas must be double amount of money in question, *Piereson v. Pierce* 37 W. 443.

Stay of receivership does not affect trial *State ex rel. Anderson v. Bell* 36 W. 196.

When necessary for judge to fix bond and it is not done appeal will be dismissed, *In re. Estate of Drasdo* 35 W. 412.

Injunction forbidding acts cannot be superseded, *State ex rel. Flaherty v. Superior Court* 35 W. 200.

Preventive injunction cannot be superseded, *State ex rel. Gibson v. Superior Court* 39 W. 115.

Temporary receivership made permanent may be stayed—court must fix stay though appeal not perfected, *State ex rel. Wash. Match Co. v. Superior Court* 34 W. 123.

Bond covers costs on dismissal—stay of order of superior court confirming action of city council in local assessment—bond with stay recitals sufficient, *Ahrens v. Seattle* 39 W. 168.

First bond for appeal and stay in the sum of \$400, second bond in sum of \$200, for appeal held good, *State ex rel. Martin v. Pendergast* 39 W. 132.

Bond not conditioned as statute prescribes held good, *King v. Branscheid* 32 W. 634.

Stay may be fixed at less than double the amount on appeal from order after judgment—quashed execution cannot be stayed, *State ex rel. Sprague v. Superior Court* 32 W. 693.

Bond is not increased by money held by garnishment, *Russell v. Graumann* 40 W. 667.

Supersedeas in condemnation by railroad does not preclude abandonment, *Port Angeles Pacific R. Co. v. Cooke* 39 W. 184.

Bond continued instead of receiver properly appointed, *Oudin & Bergman etc. Co. v. Conlan* 38 W. 134.

Clerk made error in entry regarding bond and appeal was dismissed, but reinstated when error corrected, *Ames v. Kinneer* 40 W. 646.

Bond with appeal and stay conditions held good as appeal bond, *State ex rel. Grass v. White* 40 W. 560.

Nothing for stay to operate on mandamus to judge denied, *State ex rel. Wheeler v. Irwin* 40 W. 413.

Judgment annulling contract and for \$82.50 is superseded by double latter amount, *Horrell v. California etc. Ass'n* 40 W. 531.

Satisfaction of judgment in superior

court does not release liability of stay bond, *Carmack v. Drum* 32 W. 236.

Court can not fix less amount for stay in lien or mortgage foreclosure, certiorari is remedy against court, *State ex rel. Bridge Co. v. Superior Court* 11 W. 366; *State ex rel. Natl. Bank v. Superior Court* 14 W. 365.

Cost bond amount \$200 and supersedeas amount is twice the judgment whether \$200 or less, *West Coast M. & I. Co. v. West Coast Imp. Co.* 25 W. 627; *Galloway v. Tjossem* 22 W. 1031; *Town of Sumner v. Rogers* 21 W. 361; *Graham v. Am. Surety Co.* 28 W. 735.

Cost and stay bond must be twice judgment and \$200, *Beezley v. Sessions* 22 W. 125; *Ritchey v. Cedar Mill Co.* 22 W. 511.

Stay bond not being double amount of judgment and \$200 appeal will be dismissed, *Loy v. Coey* 31 W. 684.

After appeal in divorce the supreme court has jurisdiction of awarding children, *Irving v. Irving* 26 W. 122.

Execution may issue if stay bond not filed, *Gilmore v. Baker & Co.* 14 W. 52.

Bond of \$200 conditional as cost and stay is insufficient, *Hewitt v. Lansdale* 26 W. 615.

Bond of \$200 conditioned for costs and stay is bad, *Pierce v. Willeby* 20 W. 129.

Sum deposited as a tender may be deducted in fixing supersedeas *Young v. Borzone* 26 W. 4.

Bond not necessary in appeal by executor from order revoking will, *State ex rel. Richardson v. Superior Court* 28 W. 677.

Supersedeas bond in appeal from order removing receiver and appointing another is not ground for prohibition to restrain order, *State ex rel. Tilton v. Superior Court* 7 W. 74.

Surety may limit liability on bond—bond cured of defects by its use—judgment against sureties, *Hanna v. Savage* 8 W. 432.

When sureties on bond are parties against whom judgment rendered appeal will be dismissed, *Smith v. Beard* 21 W. 204.

Supersedeas will not be granted by supreme court to allow prohibition refused by superior court, *State ex rel. Bringgold v. Burns* 21 W. 227.

Revenue stamp was not necessary on bond, *Dawson v. McCarty* 21 W. 314.

Stay bond operates on existing conditions of case and is not retroactive, *Anderson v. Tingley* 20 W. 592.

Appeal from judgment quashing alternative prohibition does not suspend judgment, supreme court may grant supersedeas to preserve rights of parties pending appeal, *State ex rel. Barnard v. Board of Education* 19 W. 8.

Signature of sureties to justification when they are named in body of bond is sufficient, *Yakima Water Co. v. Hathaway* 18 W. 377.

Damages for rental value of furnished rooms is rental less expenses of house, *Kohne v. White* 12 W. 199.

Certiorari is remedy if bond fixed contrary to statute, *State ex rel. Washington Bridge Co. v. Superior Court* 11 W. 366.

Supersedeas on appeal from order dis-

charging receiver does not reinstate receiver, State ex rel. Oudin v. Superior Court 31 W. 481.

Bond sufficient for appeal and to stay money part of judgment held good, LaCaff v. Dutch Miller M. & S. Co. 31 W. 566.

Use of word "plaintiff" for defendant will not defeat bond, Dossett v. St. Paul & T. Lumber Co. 31 W. 489.

Appeal bond running to sureties on plaintiff's cost bond, as well as to respondents, is sufficient, failure to sign by one of obligees is not fatal if there is another sufficient surety, White Crest Canning Co. v. Sims 29 W. 389.

Supreme Court denied certiorari but ordered lower court to fix supersedeas bond in the case, State ex rel. Norris Safe & L. Co. 30 W. 177.

Superior Court will not be prohibited from fixing stay bond in temporary mandatory injunction on notice, State ex rel. Quandt v. Superior Court 30 W. 197.

Bond must be given to stay receiver pending appeal, State ex rel. Sanglin v. Superior Court 30 W. 232.

Receiverships may be stayed, State ex rel. Bank v. Superior Court 12 W. 677.

Attorney may sign appellants name to bond—surety company is sufficient surety, De Roberts v. Stiles 24 W. 611; Penna. Mtge. Co. v. Gilbert 18 W. 667.

**§7297. Defects in Appeal Bond Not Ground for Dismissal.** §9. When a notice of appeal to the supreme court shall have been served and filed in due time and an appeal bond shall have been given within the time required by law, no appeal shall be dismissed because of any defect in the appeal bond, nor because an appeal bond which is given both as a cost bond and as a bond on supersedeas shall be insufficient by reason of the amount, but the appellant shall in all cases be allowed to give a new bond within such time and upon such terms as the court may order. L. '15 300.

Amendments generally §7319.

Appeal against plaintiff and codefendant bond only to plaintiff cannot be amended

to save appeal against codefendant, Mogelberg v. Calhoun 94 W. 662.

Bond "for" appellant instead of "against" him held good, Rupe v. Kemp, 99 W. 371.

**AN ACT** authorizing the execution on behalf of the State of Washington of bonds in judicial proceedings, and declaring an emergency. Approved March 9, 1905. Laws '05 p 203.

**§7298. Bonds by State.** §1. That the attorney general is hereby authorized to execute on behalf of the State of Washington appeal or any other bonds required to be given by the State in any judicial proceedings to which it is a party in any court whatsoever, and to procure sureties thereon.

**§7299. Bond for Injunction in Plaintiff's Appeal.** §8. In all cases where a final judgment shall be rendered by any superior court of this state in a cause wherein a temporary injunction has been granted, and the party at whose instance such injunction was granted shall appeal from such judgment, such injunction shall remain in force during the pendency of such appeal, if, within five days after service on him of notice of the entry of the final judgment, such appellant shall file with the clerk of the superior court a bond, with one or more sufficient sureties, in a penalty to be fixed by said court, conditioned that the appellant shall pay to the respondent all costs and damages that may be adjudged against the appellant on the appeal, and all costs and damages that may accrue to the respondent by reason of the injunction remaining in force.

Temporary restraining order against issuance of county bonds continued in force by supreme court, Bier v. Clements 95 W. 505.

Supreme court continued injunction where all defendants insolvent, State ex Davis & Co. v. Court 95 W. 258.

If parties agree that restraining order shall stand until trial it is not subject of stay, State ex Ferguson v. Court 71 W. 1.

Trial court may suspend injunction pending appeal, State ex rel. Burrows v. Superior Court 43 W. 225.

Exparte restraining order can not be kept in force during appeal, Coleman v. Columbia etc. Ry. 8 W. 227.



**§7300. Bond for Injunction in Appeal to United States Supreme Court.**  
**§9.** In all cases where a final judgment shall be rendered by the supreme court of this state in a cause wherein a temporary or final injunction has been granted, and the party at whose instance such injunction was granted shall appeal from such judgment to the supreme court of the United States, such injunction shall remain in force during the pendency of such appeal, if, within sixty days after the rendition of such judgment of the supreme court of this state, such appellant shall file with the clerk of the supreme court a bond, with one or more sufficient sureties, in a penalty to be fixed by said court, conditioned that the appellant shall pay to the respondent all costs and damages that may be adjudged against the appellant on the appeal, and all costs and damages that may accrue to the respondent by reason of the injunction remaining in force.

**§7301. Justification of Sureties by Affidavit in First Instance. §10.**  
 An appeal bond, whether conditioned so as to effect a stay of proceedings or not, shall be of no force unless accompanied by the affidavit of the surety or sureties therein attached thereto, in which each surety shall state that he is a resident of this state and is worth a certain sum mentioned in such affidavit, over and above all debts and liabilities, in property within this state, exclusive of property exempt from execution, and which sums, so sworn to by the surety or sureties, shall be at least equal to the penalty named in the bond if there be but one surety, or shall amount in all to at least twice such penalty if there be more than one surety.

An appeal will be dismissed where the bond on appeal contains no justification of any surety, *Mironski v. Noon*, 65 W. 568. *Moynahan* 27 W. 379.

Word "not" will not vitiate bond when a clerical error and sureties were not objected to below, *Jones v. Herrick* 33 W. 197.

Sufficiency of sureties must be raised in superior court, *Welser v. Holmanz* 33 W. 87.

Attorney may be surety—affidavit and acknowledgement may be combined, *Murray v. Moynahan* 27 W. 379.

One surety justifying not to separate property in exact amount of bond though he is married man is sufficient, *Murray v.*

Appeal will not be dismissed because affidavit defective, *Horton v. Donohoe Kelly Banking Co.* 15 W. 399.

Justification is jurisdictional, *Northern etc. Trust v. Hender* 12 W. 559; 27 W. 729.

Surety may justify before another surety, *Spokane etc. Co. v. Loy* 21 W. 501.

When bond not accompanied by required affidavits, appeal will be dismissed, *Investment Trust v. Hender*, 12 W. 559.

Appeal dismissed where sureties fail to justify, *McFadden v. Mountain, etc., Co.*, 27 W. 729; *Starling v. Burdette*, 28 W. 261.

But not where surety is a guarantee company, *De Roberts v. Stiles*, 24 W. 611.

**§7302. Justification of Sureties—New Bond. §11.** Any respondent may except to the sufficiency of the surety or sureties in an appeal bond, within ten days after the service on him of the notice of appeal or within five days after the service on him of the bond or written notice of the filing thereof, by serving on the appellant a notice stating that he so excepts, and specifying a place, at the county seat, and a time, not less than three nor more than ten days distant, at which the surety or sureties are required to attend before the superior court in which the judgment or order appealed from was rendered or made, or before a judge thereof, and to justify their sufficiency as sureties. At the time and place named in such notice, or to which the proceeding may be thence adjourned by the court or judge, the surety or sureties must attend before the court or judge, and may be then and there examined in detail, under oath, as to their property and other qualifications as sureties, by any respondent or by the judge, or by both. If the judge, upon such examination, is satisfied that the surety or sureties are qualified as such, to the extent to which they are required by section eight of this act to make affidavit, then he shall make a certificate to that effect, indorsed upon or attached to the bond, which shall thereupon stand as a sufficient appeal bond to the effect expressed in the condition thereof; but if he is not so satisfied, or if the sureties fail to attend and justify, then the judge shall in like manner certify to that effect, and thereupon the bond shall become void: Provided, That in such case the appellant may, within five days after the making of such certificate, file a new appeal bond, in conformity with the requirements of this act, and subject to the requirements of justification of the sureties therein, as hereinabove provided, but in case such new appeal bond be found insufficient, no new bond can thereafter be filed in lieu thereof. In case the original or new appeal bond be not conditioned

so as to effect a stay of proceedings, nowever, an additional appeal bond may be filed at any time thereafter when the appellant desires to effect a stay as provided in this act, during the pendency of the appeal. The examination of the sureties taken upon their justification shall be reduced to writing and subscribed by the sureties, if either party so requires, and attached to the certificate made thereon.

Appeal will not be dismissed for want of form of justification of sureties, *Frew v. Clark* 34 W. 561.

Second bond may be given in five days after first bond insufficient, *Pennsylvania Mtge. Co. v. Gilbert* 18 W. 667; *Wallace v. Packing Co.* 25 W. 143; *Maney v. Hart* 11 W. 67.

Objection to justification can not be raised first time in supreme court, *Sligh v. Shelton & S. W. Ry.* 20 W. 16.

Defective bond will not dismiss appeal unless appellant has had opportunity to amend, *Miller v. Vermurie* 7 W. 386.

Objections to bond can not be raised for first time in supreme court, *Jenkins v. Jenkins University* 17 W. 160.

After exception to bond it is ineffectual without certificate of judge, *Glover v. Cove* 16 W. 323.

Appellant may produce new bond instead

of sureties to justify, *Spurlock v. Port Townsend etc. Ry.* 12 W. 34.

Objections to bond must be raised in trial court in the first instance, *Cook v. Tibbals* 12 W. 207.

Objection to sureties can not be made in supreme court in first instance, *McEachern v. Brackett* 8 W. 652; *Roberts v. Ry. Co.* 21 W. 427.

When sureties fail to justify and no new bond filed appeal will be dismissed, *Starting v. Burdette* 28 W. 261.

Testimony of sureties need not be reduced to writing unless required by one of the parties, *Hyatt v. Lewis* 20 W. 303.

Superior court can not allow new surety on second appeal bond, *State ex rel. Brewer v. Chapman* 17 W. 109.

Same surety may sign second bond—court can not of its own motion certify bond insufficient, *State ex rel. Bank v. Superior Court* 12 W. 677.

**§7303. Bond for Stay—Execution Recalled.** §12. When an appeal bond is conditioned so as to effect a stay of proceedings, if execution has issued the clerk shall, on demand of the appellant, issue to the sheriff a certificate that proceedings have been stayed, which shall countermand the execution; and thereupon the sheriff shall release any property levied on and not already sold, and return the execution into court.

Restitution in forcible entry and detainer, §7991.

**§7304. New Bond Required at Any Time.** §13. If any respondent shall have cause to believe, after any appeal bond shall have been filed and the sureties therein have justified or the time for requiring their justification has expired, that the sureties have since become disqualified as such, so that the bond is no longer an adequate security, he may apply by motion to the supreme court to require a new or additional bond; and upon the hearing of such motion the court may receive evidence in support of and in opposition to the motion in such manner, and may make such order thereon, as it shall deem proper.

**§7305. Transcript on Appeal—Supplementary Record.** §14. Within ninety days after an appeal shall have been taken by notice as provided in this title, the clerk of the superior court shall prepare, certify and file in his office, at the expense of the appellant (except in criminal appeals prosecuted in forma pauperis, and in such cases at the expense of the county), a transcript containing a copy of so much of the record and files as the appellant shall deem material to the review of the matters embraced within the appeal, said transcript to be so prepared, certified, and filed, in the office of the clerk, at or before the time when the appellant shall serve and file his opening brief, as hereinafter provided. Within four months after said appeal shall have been taken by notice as aforesaid, the clerk of the superior court shall, at the expense of appellant, send up to the supreme court said transcript together with the original briefs on appeal filed in his office. The papers and copies so sent up together with any thereafter sent up as hereinbelow provided, shall constitute the record on appeal. Any bill of exceptions or statement of facts on file when the record is so sent up shall be sent up as a part thereof, unless the superior court or a judge thereof has not yet passed on an application for the settlement and certifying of such bill or statement. In case any bill of exceptions or statement of facts shall be filed or certified, or any other addition to the records or file shall be made after the record on appeal shall have been sent up, a supplementary record on appeal embracing so much thereof as the appellant deems material, or a copy thereof may be prepared, certified and sent up at any time prior to the hearing of the appeal. And in case the respondent deems any part of the files or record



not already sent up to be material to the review of the matters embraced within the appeal, he may cause the clerk, in like manner, at his expense, to prepare, certify and send up a supplementary record on appeal embracing such omitted files or records, or copies thereof, at any time prior to the hearing of the appeal. Any such supplementary record or records, if filed in the supreme court prior to the hearing of the appeal, shall be considered by the court as part of the record on appeal, so far as the same may be material to a review of the matters embraced within the appeal. When the review of an original paper in the cause may be important to a correct decision of the appeal, the court or judge may order the clerk to transmit the same to the clerk of the supreme court and the same shall be transmitted accordingly, and shall be under the control of the supreme court.

Filing of record, brief and abstract is not jurisdictional and time may be allowed, *Weiffenbach v. Puget Sound Br. & D. Co.* 103 W. 240.

Court rules §7338c.

Statement in narrative form untrue, remedy, *State ex Hofstetter v. Sheeks*, 63 W. 408.

Form of certificate Supreme Court Rule 5.

Bill of exceptions in certiorari, §7423.

In murder in first degree court refused to strike transcript because of absence of bill or statement, *State v. Newcomb* 58 W. 414.

Appeal on judgment roll to test complaint and findings—no finding of residence in divorce fatal, *Ramsdell v. Ramsdell* 47 W. 444.

Transcript not filed in time terms may be imposed and filing held valid, *Driscoll v. Dufur* 45 W. 494.

Voluminous disorderly record will not be reviewed, *Schell v. Walla Walla* 44 W. 43.

In proceedings after judgment whole record not necessary, *Exposition Amusement Co. v. Raeco Products Co.* 55 W. 314.

Mandamus to compel judge to certify without incorporating entire reporter's minutes, *State ex rel. Roberts v. Clifford* 55 W. 440.

Only the part of record brought up reviewed—evidence presumed sufficient, *Nelson v. McPhee* 59 W. 103.

Filing transcript in time is not jurisdictional, *McAvoy v. Jennings* 39 W. 109.

Transcript not filed in ninety days held good, *Dean v. Oregon R. & N. Co.* 38 W. 565.

Error in refusing to quash second information because it states other crimes than one defendant extradited for, record must show both informations, *State v. Boggs* 16 W. 143.

Affidavits will not be stricken from transcript when they were used by trial court, *State v. Hyde* 22 W. 551.

Statement must be certified up to secure review of exceptions to findings, *Thacker Wood & Mfg. Co. v. Mallory* 27 W. 670.

Corrected transcript showing service of summons entitled plaintiff and respondent to affirmance of judgment on rehearing, failure to file affidavit of service until after

decision on appeal will not give affirmance but cause will be remanded, *Powell v. Nolan* 27 W. 318.

Record can not be controverted by affidavits, *Washington Liquor Co. v. Alladio Cafe Co.* 28 W. 176.

Presumption of verity of judges certificate, *Murray v. Shoudy* 13 W. 33.

Premature filing of transcript held good, *Griffith v. Maxwell* 20 W. 403.

Where bill is detached from transcript it will not be considered, *Stimson v. Sachs* 8 W. 391.

Filing of transcript is jurisdictional, *Cochrane v. Gunderson* 11 W. 141.

Appellant's brief will not be stricken because transcript not prepared in time, *Maxwell v. Griffith* 20 W. 106.

Failure to file transcript extended by extension of time, *Richardson v. Spangle* 22 W. 14.

Transcript sent up but not filed in time because fees not paid appeal will not be dismissed, *First Natl. Bank v. Hatfield* 20 W. 224.

Clerk's excuse of "press of business" is not excuse for failure to file transcript, *County of Chehalis v. Pearson* 10 W. 216.

Motion to dismiss for failure to amend record will not prevail if made after record is sent up, *Gustin v. Jose* 10 W. 217.

Motion to dismiss because transcript and brief not filed in time is too late if they are on file, *Benn v. Chehalis County* 10 W. 291.

Motion to dismiss for failure to file transcript should be based on short record and ten days' notice, *Cochrane v. Gunderson* 10 W. 326.

Failure to file transcript before brief will subject appellant to terms, *Prescott v. Puget Sound Bridge & D. Co.* 30 W. 158.

Appeal will not be dismissed where appellant filed brief before transcript when motion is made after transcript supplied, *Raymond v. Bales* 26 W. 493.

In case tried on complaint and demurrer no statement or bill necessary, *State ex rel. Tremblay v. McQuade* 12 W. 554.

Transcript can not be corrected by extrinsic evidence, *Ward v. Springfield Fire etc. Ins. Co.* 12 W. 631.

Supplementary record not certified and filed late will not be considered, *DeWay v. South Side Land Co.* 11 W. 210.

AN ACT relating to appeals to the supreme court, and amending an act entitled: "An act relating to appeals to the supreme court of the State of Washington and amending section 1718 of Remington & Ballinger's Annotated Codes and Statutes of Washington," approved by the governor March 19, 1913, by adding new sections thereto. Approved March 16, 1915. Laws '15 p 300.

**§7307. Abstract of Record by Appellant—Supplemental Abstract by Respondent—Costs.** §1. That the appellant shall, at or before the time when he is required by rule or statute to serve his opening brief, cause to be typewritten and served upon the opposite party an abstract of so much of the record and statement of facts as he may deem necessary to the proper hearing of his assignments of error: Provided, That in all cases in which no testimony is sent up with the record, or in which the statement of facts does not exceed one hundred (100) pages of double space, typewritten evidence, no abstract of record shall be required. Said abstract, in so far as it sets out testimony, shall be condensed into narrative form, without the questions and answers except when necessary for the discussion of evidence. It shall be prepared without notice or hearing thereon, and if the opposite party be not satisfied with it, he may cause to be typewritten and served, without notice, either before or at the time of serving his answering brief, so much of the record and statement of facts, condensed as above, as he for his part may deem proper for the correction or supplementing of his opponent's abstract. Each party shall pay the cost of typewriting his abstract, and the prevailing party shall be entitled to recover his disbursements therefor as other costs. For any abuse in typewriting excessive or unnecessary matter in the abstract, the supreme court, without regard to which party may prevail, may impose the costs thereof upon the party committing such abuse. The supreme court shall also provide by rule the form of abstracts, the number thereof to be typewritten, and for other particulars thereof, including the time and place of filing the same.

Filing of transcript brief and abstract not jurisdictional and time may be allowed, *Weiffenbach v. Puget Sound Bridge & D. Co.* 103 W. 240.

Failure to return statement extends time for abstract and brief, *Pacific Coast Coal Co. v. Esary* 85 W. 448.

Too much abstract will dismiss appeal only in extreme case, *Soboda v. Nolf & Co.* 91 W. 446.

Appellant's abstract stated conclusions as to effect of testimony and was too brief—respondent's abstract will not supply—appeal dismissed, *Crowley v. Byrne* 82 W. 146.

Abstract imperfect—second does not cure—appeal dismissed, *Union Trust & Sav. Bank v. Amery* 81 W. 133.

Abstract not served in time appeal will be dismissed, *Ollar-Robinson Co. v. O'Neill* 80 W. 1, affirmed, *Caldwell v. Klyce* id. 469.

Voluminous abstract not conforming to law and rules, no costs allowed, *Gordon v. Cummings* 78 W. 515.

Act retroactive, *In re Waite Street* 89 W. 688.

Voluminous evidence not abstracted will not be considered on exceptions to instruction, *Brown v. Walla Walla* 91 W. 116.

No abstract necessary when transcript less than 100 pages containing pleadings, *Freeborn v. Chewelah Copper, etc., Mining*

*Co.* 89 W. 519.

Short statement, abstract will not be stricken for failure to refer to it, *Rockwood v. Turner* 89 W. 356.

Liberal transcript of record in abstract excused, *Kasper v. Spokane Merchants Assn.* 87 W. 447.

Copy of transcript is not abstract—was not filed, appeal dismissed, *Speckert v. Speckert* 85 W. 229.

Abstract neither abstracted evidence nor referred to transcript, appeal dismissed, *Heine v. Hall* 84 W. 260.

Abstract not served on two respondents appear separately, appeal will be dismissed as to them—court will not search abstract, *Silvain v. Benson* 83 W. 271.

Abstract served after opening brief, appeal dismissed, *Hodges v. Wright* 81 W. 321.

Respondent filing no supplemental abstract case will be heard on appellant's abstract, *Egholm v. Williams* 81 W. 609.

Abstract need not refer to evidence when no question—failure in brief to refer to abstract excused, *Mandioli & Stewart v. American Building Co.* 83 W. 584.

Both briefs failed to refer to abstract, excused—abstract need not quote evidence—respondents' abstract supplied omitted instructions to jury saving dismissal, *King v. King* 83 W. 615.

**§7308. Statements of Fact and Bills of Exceptions.** §2. Nothing in this act contained shall alter in any respect the present manner of settling and certifying statements of fact and bills of exceptions, and such statements and bills shall be transmitted to the supreme court to be referred to in any controversy concerning the accuracy of the abstracts, as well as for reference to exhibits, and for such other uses as the supreme court may find proper in consideration of all matters on appeal.

Does not dispense with statement of facts, *Michaelson v. Overmeyer* 77 W. 110.

**§7309. Time of Appeal.** §3. Amends §7292.

**§7310. Extension of Time for Opening Brief.** §4. In all cases in which the abstract of record which, by the terms of this act, is to be served upon the opposite party by the appellant is served within the time limited by



existing law, or by any law hereafter passed, for the service of appellant's opening brief, the time for serving appellant's opening brief shall be, by such service of such abstract of record, extended for and until ten days after the service of such abstract of record, providing that the time for serving such opening brief would otherwise have expired within said ten days, and this section shall not be construed to shorten the time for serving of appellant's opening brief.

**§7311. Extension of Time for Respondent's Brief.** §5. In all cases in which the opposite party is not satisfied with the abstract of record as furnished by the appellant, and in which such opposite party shall serve so much of a record and statement of facts as he shall deem proper for correcting or supplementing of his opponent's abstract, the service thereof shall extend the time as limited by existing law, or by any law hereafter passed for the service of the opposite party's brief for a period of ten days from and after the service of said correcting and supplementing abstract by the opponent, but this section shall not be construed to shorten the time for the serving of the opponent's brief.

**§7312. Insufficient Abstract — Amendment — Dismissal on Failure to Amend.** §6. In case the appellant serves an abstract of record and statement of facts within the time limited by this act, and it is found that the same is insufficient and defective under the terms of this act or the rules of the supreme court, the appeal shall not be dismissed by reason thereof, but the appellant may be allowed to file an amended or supplementary abstract as may be required by the facts of the case within such time and upon such terms as may be fixed by the order of the supreme court, and if the appellant fails to comply with the order of the court in regard thereto, then the appeal may be dismissed by reason and because of such failure to comply with the order of the supreme court in regard thereto.

Abstract amended on terms, *Kranzusch v. Trustee Co.* 93 W. 629.

Abstract not conforming with court rules not ground for dismissal if abstract amendable, *Singer v. Metz Co.* 101 W. 67.

Affirmed *Wishkah Boom Co. v. Greenwood Timber Co.* 100 W. 472.

**§7313. Order of Filing and Serving Immaterial.** §7. Whenever any statute heretofore or hereafter enacted requires a motion for a new trial, statement of facts, bill of exceptions, notice of appeal or other documents concerning appeals or constituting a part of the record of appeals to the supreme court, or to any other tribunal having appellate jurisdiction, to be filed and served or served and filed, the serving and filing shall be equally valid and effectual whether the document shall be filed or served first and no appeal shall be dismissed because of the order of the filing and serving.

**§7314. Grant of Time to Supply Abstract or Statement.** §8. In case of a failure of the appellant to serve an abstract of record and statement of facts, or the one served is insufficient, the supreme court shall, if such failure is found to be excusable, allow the appellant a reasonable time, upon such terms as the court may impose, in which to supply such abstract of record and statement of facts.

No reasonable excuse shown for day—90 day limit jurisdictional, *American Fuel Co. v. Benton* 98 W. 26.

Failure to abstract evidence not ground for striking statement of facts, *State ex State Bank v. Scott* 102 W. 510.

Appellant conducted negotiations for two months, had no notice of findings for one month, extension of time for statement granted—terms imposed, *State ex rel. Gold Creek Antimony M. & S. Co. v. Superior Court* 89 W. 684.

Time of filing statement same as before—thirty days—mistaking when time begins to run not excuse, *Codd v. Von Der Ahe* 92 W. 529.

Allowance of error assigned in supplemental brief discretionary, *State v. Paysse* 80 W. 603.

Failure to return statement extends time for briefs, *Pacific Coast Coal Co. v. Esary* 85 W. 448.

Errors assigned in reply brief disregarded, *Marshall v. Dunn*, 93 W. 156.

Substantial compliance in brief in assignment of error sufficient, *Moore v. Spokane* 88 W. 203.

Briefs not filed for fifteen months, appeal dismissed, *Levold v. Stirrat* 72 W. 26.

Need not assign error when verdict excessive when inference may be drawn—verdict reduced regardless of motives of jury, *Williams v. Spokane Falls & N. R. Co.* 44 W. 363.

Brief containing matter abusive of opposing attorneys stricken with leave to file proper brief, *Stern v. Daniel* 45 W. 611.

Failure to print findings or exceptions thereto not fatal, *Bybee v. Bybee* 45 W. 187.

Errors not pointed out will not be considered but if rule 8 complied with brief will not be stricken—motion to dismiss, *Spedden v. Sykes* 51 W. 267.

Findings may be printed in reply brief,

Thompson v. Benson 41 W. 70; Timm v. Timm 34 W. 228.

Briefs not stricken because prolix, Sawyer v. Vermont Loan & Tr. Co. 41 W. 524.

Where record short and extended reference unnecessary failure to refer to record in brief is not fatal, State v. Brown 37 W. 97.

Brief grossly discourteous to trial judge stricken with leave to file over, Coats v. Seattle Electric Co. 37 W. 8.

Stipulation that additional authorities may be cited will not admit of new assignment of error, Crane Co. v. Pacific Heat & Power Co. 36 W. 95.

Where demurrer to complaint is only assignment it need not be specified in brief, James v. James 35 W. 655.

Brief will not be stricken for want of assignment of error when only one error, McKenzie v. Royal Dairy 35 W. 390.

Brief will not be stricken because title of case incorrect, State v. Lewis 35 W. 261.

Brief giving pages of record sufficiently points out errors, Johnston v. Gerry 34 W. 524.

Statement not bound with transcript and belated but identified will not be stricken, Johnston v. Gerry 34 W. 524.

Where there is but one error brief will not be stricken though error is not clearly pointed out, Brown v. Callaway 34 W. 175.

Brief not stricken because of failure to page exhibits, Jones v. Herrick 33 W. 197.

Failure to print findings or take exceptions will not dismiss appeal nor cause briefs to be stricken, Corbett v. Civil Serv. Com'n. 33 W. 190.

Alleged errors pointed out, but not argued, will be disregarded, Hawkins v. Casey 38 W. 625.

References in argument is sufficient assignment of errors, Chandler v. Shingle Co. 13 W. 89; but see Haugh v. Tacoma 12 W. 386; Ogle v. Jones 16 W. 319.

Briefs not filed in time may be filed at any time before motion to dismiss, Griffin v. Maxwell 20 W. 403.

Briefs will not be stricken when court below has extended time without notice, National Christian Assn. v. Simpson 21 W. 16.

Failure to print findings in brief is not fatal, In re Alstad's Estate 27 W. 175.

Briefs not filed within ninety days appeal will be dismissed, In re Sullivan's Estate 25 W. 430.

Delay in filing briefs not fatal unless injury shown, Gay v. New Whatcom 26 W. 389.

Briefs filed after time will not be stricken unless injury is shown, In re Hill's Heirs 7 W. 421.

If brief states essential facts and makes reference to record it is sufficient, Drumheller v. American Surety Co. 30 W. 530.

Findings not required to be printed where error is predicated on conclusion of law, In re Seattle 26 W. 602.

Findings may be printed in reply brief under rule 8, subd. 5, Young v. Borzone 26 W. 4.

Where there are charges and counter charges of misstatement of facts in briefs they will not be stricken, Sawdey v. Spokane Falls etc. Ry. 27 W. 536.

Appellant's brief stricken because of charge of "judicial ignorance" to trial court but new briefs allowed, Sawdey v. Spokane Falls etc. Ry. 27 W. 536; respondent's brief in answer were not stricken id.

Failure to comply with rule 8 may be cured by new briefs, Graton & Knight Mfg. Co. v. Redelsheimer 28 W. 370.

If findings are not printed as required by rule 8 court will not examine evidence—if no argument made why ruling on demurrer erroneous it will not be considered, Interstate Svgs. & L. Assn. v. Benson 28 W. 578.

Only findings and conclusions to be reviewed should be printed, Cathcart v. Bryant 28 W. 31.

Errors not assigned in brief will not be reviewed, State ex rel Buddress v. Rhode 8 W. 362.

Court on terms in criminal case permitted amendment of brief to indicate pages of record where errors were assigned, State v. Carter 8 W. 272.

Typewritten briefs will be stricken, State v. Oleson 9 W. 186.

Oral stipulation out of court extending time of filing briefs will not be recognized, Livesley v. Pier 9 W. 658.

Errors not assigned in brief will be disregarded, Murphy v. Currie 21 W. 232.

References in brief to pages of transcript not necessary when questions are on pleadings, Sligh v. Shelton & S. W. Ry. 20 W. 16.

If briefs substantially comply with rule 8 regarding statement and printing findings they will not be stricken, Dunsmuir v. Port Angeles Gas etc. Co. 24 W. 104.

References in briefs to transcript will not be strictly required where transcript is short and only error assigned is on pleadings, Hyatt v. Lewis 20 W. 303.

Extension of time to appellant by stipulation will not operate to extend time to respondent, Carison Bros. & Co. v. Van Devanter 19 W. 32.

Briefs not referring to record when extensive will be stricken, Washington Mill Co. v. Sprague Lumber Co. 19 W. 165.

Brief filed out of time by one not an attorney of record will be stricken 19 W. 340.

When briefs not conforming to rule as to dimensions, will be stricken, Von Schrader v. Welcher 19 W. 349.

Costs refused because briefs not of proper dimensions, Bernier v. Bernier 17 W. 689.

Findings not printed in brief will not be reviewed, Lewis v. McDougall 19 W. 388.

Failure to file briefs in time excused when defendant incarcerated and his attorney had removed from the state, State v. Williams 18 W. 47.

Briefs not filed in time because of pressure of "other business" appeal will be dismissed, Ambrose v. Gevinnup 16 W. 333.

Briefs stricken because errors not assigned, Doran v. Brown 16 W. 703.

If errors are not assigned in brief it will be stricken, Perkins v. Mitchell, Lewis Lewis & Staver Co. 15 W. 470.

Ground for dismissal unless jurisdictional must be noticed in brief to avail, Payne v. Spokane Street Ry. 15 W. 522; Luce v. Luce 15 W. 608.



Where record was short court reviewed case though errors were not assigned in brief, *Froelich v. Morse* 15 W. 636.

Errors can not be urged for first time in reply brief, *Peck v. Stanfield* 12 W. 101.

Brief setting out facts held good though findings were not printed, *Fares v. Gleason*, 14 W. 657.

Where brief does not raise only point case will be dismissed, *Calton Mercantile Co. v. Duff*, 11 W. 35.

Reply brief will be stricken if opening brief does not present case, *Vestal v. Morrie* 11 W. 451.

Findings need not be printed in brief when no evidence offered and findings follow complaint, *Payette v. Ferrier* 31 W.

43.

If errors relied on can be discovered in brief it will not be stricken because errors not assigned, *Crowley v. McDonough* 30 W. 57.

Transcript and brief filed before motion to dismiss are in time—transcript forwarded and respondent deprived of its use is not ground for dismissal—good cause will be presumed where time is extended for filing briefs, *Chapin v. Port Angeles* 31 W. 535.

Brief assigning error in sustaining defendant's demurrer to plaintiff's petition is sufficient, *State ex rel. McClaine v. Reed* 29 W. 382.

Cited 80 W. 1.

#### §7315. Filing and Service of Briefs—Additional Authorities. §15.

Within ninety days after an appeal shall have been taken by notice, as provided in this title, the appellant shall serve on the respondent three copies and shall file with the clerk of the superior court fifteen copies, together with proof or written admission of service, as aforesaid, of a printed brief on the appeal upon his part, which brief shall clearly point out each error that the appellant relies on for a reversal, and shall conform to such regulations of its contents in other respects, and its form and size, as the supreme court by its rules may have prescribed. Within thirty days after the service of the appellant's brief, the respondent shall likewise serve and file with the clerk of the superior court, with like proof of service, the like numbers of copies of a printed brief on the appeal upon his part which shall likewise conform to the rules of the supreme court. Not less than ten days prior to the hearing the appellant may also serve and file either with the clerk of the superior court or in the supreme court like printed brief or briefs, strictly in reply to respondent's brief. The time for service and filing of briefs, as in this section prescribed, may be extended by order of the superior court for good cause shown, or by stipulation of the parties concerned; and if the time for filing any statement of facts shall be extended by order or stipulation, the time herein prescribed for serving and filing the appellant's opening brief shall thereby be correspondingly extended. Either party may after the filing of his briefs and not less than one day prior to the hearing of the appeal submit to the supreme court and to the adverse party a written or printed statement of any additional authorities, with suitable comment thereon strictly in support of the position taken in his brief hereinabove required to be filed. But the appellant shall not be permitted to urge in any such reply brief or statement of additional authorities, or on the hearing, any grounds for reversal not clearly pointed out in his original brief. L. '01 28.

Filing of brief, record and abstract not jurisdictional, *Weiffenbach v. Puget Sound Br. & D. Co.* 103 W. 210.

Motion, to dismiss, because of belated filing denied, *Bogdan v. Pappas* 95 W. 579.

Abstracts may extend time §7310.

Court rules §7338e.

Brief on file, case submitted on if no appearance (court rules) §7338m.

Respondent filing no brief, hearing for appellant §7338m.

§7316. When Supreme Court Acquires Jurisdiction. §16. Upon the taking of an appeal by notice as provided in this act, and the filing of a bond to render the appeal effectual, the supreme court shall acquire jurisdiction of the appeal for all necessary purposes, and shall have control of the superior court and of all inferior officers in all matters pertaining thereto, and may enforce such control by a mandate or otherwise, and, if necessary, by fine and imprisonment, which imprisonment may be continued until obedience shall be rendered to the mandate of the supreme court. But the superior court shall nevertheless retain jurisdiction for the purpose of all proceedings by this act provided to be had in such court, and for the purpose of settlement and certifying of bills of exceptions and statements of facts, and for all purposes in so far as the cause is not affected by the appeal.

Prohibition will lie to prevent execution on judgment appealed from, *State ex rel. Merrill v. Superior Court* 80 W. 109.

Superior court may allow alimony, etc., all orders necessary to enable it to settle pending appeal, *Lewis v. Lewis* 83 W. 671; bills of exceptions and statements of facts,

Including an order requiring the production of stenographic notes, *State ex rel. Griffith v. Court* 71 W. 386.

Appeal by the state from an order fixing bail does not operate as a stay of proceedings, and the court must accept bail pending the appeal, *Estate ex rel. Morehead v. Chapman*, 64 W. 140.

The taking of an appeal from a decree in divorce deprived the trial court of jurisdiction to modify the written entry of the judgment at the instance of an intervenor, *Gust v. Gust* 71 W. 75, 189.

Appeal from order dismissing action with supersedeas bond lower court is without jurisdiction to modify restraining order—supreme court will not modify order—remedy, *Inland Nursery etc. Co. v. Rice* 56 W. 21.

Supersedeas vacated on allowing writ of review trial court may proceed, *Portland etc. R. Co. v. Skamanla Boom Co.* 59 W. 191.

Allmony by supreme court, *Holcomb v. Holcomb* 49 W. 498; *Sullivan v. Sullivan* id. 508.

Receiver pays out money at his peril after appeal from order directing him to do so, *Johnson v. Joslyn* 47 W. 531.

Superior court has no jurisdiction to

vacate void judgment—no power to correct, *Aetna Ins. Co. v. Thompson* 34 W. 610.

Superior court will be prohibited from acting further, *State ex rel. Mullen v. Superior Court* 15 W. 376.

Respondent can not move vacation of judgment appealed from, *Canada Settlers L. & Tr. Co. v. Murray*, 20 W. 656.

Pending appeal on interlocutory order superior court retains other parts of case, *State ex rel. Manhattan Trust Co. v. Superior Court* 17 W. 380.

After appeal from order appointing receiver court below can make no further orders, *Brundage v. Home etc. Assn.* 11 W. 288.

Jurisdiction can not be conferred by consent, *Stark v. Jenkins* 1 W. T. 421.

Judgment in supreme court for costs against defendants who have not been served is void and may be attacked in that court, *Bell v. Waudby*, 7 W. 203.

Judgment in supreme court in equity case cannot be modified by lower court after cause remanded, *State v. Sup. Ct.*, 7 W. 234.

Stipulation as to part of funds in controversy does not affect right of appeal, *Seattle v. Liberman*, 9 W. 276.

**§7317. Calendar. §17.** All appeals, in which the record shall have (been) filed in the supreme court at least ten days before the beginning of any stated session of the court, shall be placed on the calendar of the court for hearing at such session; and the subsequent filing of a supplementary record shall not affect the position of the appeal on the calendar. But the hearing of an appeal may at any time be postponed by the court or continued for the session, of its own motion or for good cause shown, and on such terms as may be just.

Cases will be heard out of order when grave public considerations demand, *Olympia v. Moore*, 7 W. 236.

Appellant's brief must be on file or cause cannot be put on calendar, *Lacey v. North Olympia Land Co.*, 4 W. 261.

**§7318. Motion to Dismiss Appeal and Affirm Judgment. §18.** Any respondent may move the supreme court, at such time and in such manner as the court by its rules may have prescribed, to dismiss an appeal either on the ground that the court has no jurisdiction of an appeal from the judgment or order from which the appeal was taken, or that the notice of appeal was not served or filed within the time limited by law, or is insufficient, or that the appeal bond was not filed within the time limited by law, or is not in form or substance such as to render the appeal effectual, or that the appellant's brief has not been served or filed, or that the record on appeal has not been sent up, or that the appeal has not been diligently prosecuted, or on any ground going to the merits of the further prosecution of the appeal, or on any two or more of the grounds hereinabove mentioned; and there may be combined with a motion to dismiss a motion to affirm the judgment or order appealed from, or a motion for damages on the ground that the appeal was taken merely for delay, or was manifestly unauthorized by law, or both such motions. A general appearance in the supreme court shall not be a waiver of the right to make any motion herein authorized.

Oversight of clerk failing to forward transcript not cause for dismissal, *Armstrong v. Spokane International R. Co.* 101 W. 525.

Motions, how made and heard (court rules) §7338o.

Service of papers (court rules) §7338p.

Dismissal on appeal because of agreement to arbitrate carries defendant's counterclaims, *Herring-Hall-Marvin Safe Co. v. Purcell Safe Co.* 91 W. 662.

Evidence in, complaint not stating cause of action, appeal will not be dismissed, *So-*

*boda v. Nolf & Co.* 91 W. 446.

Ten days' notice required to strike transcript and dismiss appeal, *City Sash & Door Co. v. Bunn* 90 W. 669.

Dismissal for want of jurisdiction judgment cannot be affirmed, *Johnston v. Seattle Taxicab & T. Co.* 89 W. 494.

Appeal premature if taken before judgment or disposal of motion for new trial and will be dismissed, *Inman v. Seattle* 86 W. 603.

No real controversy, appeal will be dismissed—will not retain to adjudicate costs,



Harper v. Grasser 86 W. 475.

Objectionable part of statute eliminated by legislature, appeal dismissed, Standard Fire Ins. Co. v. Fishback 86 W. 225.

Appeal dismissed without passing on merits proceedings in control of superior court, State ex rel. Prentice v. Superior Court 86 W. 90.

Appeal from temporary injunction dismissed when arbitration agreement made after appeal, Eben v. Houser 85 W. 367.

Findings not excepted to, there remains the question do the findings support the decree—dismissal refused, Nichols v. Capen 79 W. 120.

No jurisdiction in superior court is not ground for dismissal in supreme court, State ex rel. Pacific P. & L. Co. v. Public Service Com. 77 W. 1.

Dismissal refused though husband violated injunction restraining his interference with wife's allotment in divorce in British Columbia, Jones v. Jones 75 W. 50.

Facts after judgment, not disputed, may be shown by affidavit on motion for dismissal, Jones v. Jones 75 W. 50.

Appeal dismissed as duplicitous where actions were tried together but not consolidated by order, Oerter v. Georger, 70 W. 110.

Case to be heard on merits, §7336.

Amendments to ordinance in controversy will not work dismissal, State ex rel. Linhoff v. Seattle R. & S. R. Co., 62 W. 124.

Intervener's appeal cannot be dismissed because he is not proper party to action below, Anderson v. Osborn, 62 W. 400.

Dismissal because case settled record must show settlement, Harrington v. Gordon 42 W. 692.

Rulings of trial court not error in trial, by the court where no material evidence rejected, Hawkes v. Hoffman 56 W. 120.

Mandamus for separate gas meters is not satisfied by one general meter and dismissal will be denied, State ex rel Hallett v. Seattle Lighting Co. 60 W. 81.

Vendees repudiated contract holding shingle bolts subject to vendors order, after adverse judgment for price cut up bolts, appeal dismissal, Konnerup v. Allen 56 W. 292.

Transfer of interest prior to trial cannot be shown by affidavit to deny record and secure dismissal, Trumbull v. Jefferson County 60 W. 479.

Wrong title in brief will not incur dismissal, Brewer v. Howard 59 W. 580.

Specific performance decree required the payment of excessive sum within 120 days controversy did not cease at that time, Whipple v. Lee 58 W. 253.

Motion to dismiss filed before briefs are served heard though motion not set out in brief—affidavit of cessation of controversy undenied sufficient—temporary receiver, Kelso v. American Inv. etc. Co. 48 W. 5.

Appeal dismissed as to co-party not joining in notice etc, Perkins v. Pierce 48 W. 380.

Saloon license expired pending appeal licensee having received benefits, appeal dismissed, Port Townsend So. R. Co. v. Nolan 48 W. 382.

City letting contract is not cessation of

controversy in appeal from dismissal of action to enjoin letting of contract, Graff v. Tacoma 61 W. 186.

Defendant may appeal from denial of relief on counter-claim, while plaintiff is moving against judgment denying him relief, Lauridsen v. Lewis 47 W. 594.

Election held appeal concerning dismissed, Mackay v. Dever 49 W. 439.

Mandamus dismissed less than \$200.00 involved, State ex rel., Lack v. Meads 49 W. 468.

Warrants issued appeal from action to enjoin issuance dismissed, National Surety Co. v. Stephens 50 W. 397.

Dismissal carries supersedeas—appeal from denial of motion to vacate supersedeas dismissed, Masoero v. Campbell 53 W. 583.

Cessation of controversy doubtful appeal will not be dismissed, State ex rel., Lowary v. Superior Court 41 W. 450.

County warrant drawn by ministerial officer is not satisfaction of judgment to cause dismissal, Ogden v. Chehalis County 41 W. 45.

Appeal by city officers from mandamus to compel submission of referendum charter amendment not dismissed because election held, Hindman v. Boyd, 42 W. 17.

Appeal from dismissal of action for mandamus to compel refund of local assessment will be dismissed after ordinance refunding money, Miller v. Seattle 41 W. 599.

In appeal from order refusing to enjoin tax foreclosure appellant paid taxes and appeal was dismissed, Trumbull v. Jefferson County 37 W. 604.

Failure to except to findings in equity case does not affect case if error assigned on exclusion of evidence, Lilly v. Eklund 37 W. 532.

If affidavits not brought up in appeal from order dissolving temporary injunction appeal will be dismissed, Anderson v. McGregor 36 W. 124.

Transcript not filed in ninety days appeal will be dismissed, Ellis v. Bardin 36 W. 122.

Appeal will not be dismissed if defendant's payment on judgment involuntary, Dodds v. Gregson 35 W. 402.

Co-appellant's withdrawal will not dismiss appeal, State v. Lewis 35 W. 261.

Liquor license expired appeal from certiorari reviewing action of city council revoking it will be dismissed, Holppa v. Aberdeen 34 W. 554.

Absence of statement of facts in personal injury case, judgment having been entered on ratified release by plaintiff, will warrant dismissal, Dibble v. Seattle Electric Co. 33 W. 596.

Federal judgment held not res judicata to cause dismissal, Hennessy v. Tacoma etc. Co. 33 W. 423.

Appeal from default judgment dismissed, judgment will not be affirmed, Walton v. Hartman 38 W. 34.

Appeal reinstated after record corrected to show jurisdiction, Ames v. Kinnear 42 W. 80.

Appellants stated in brief that they were not entitled to possession in unlawful detainer action, damages not being recoverable, appeal was dismissed be-

cause of no controversy, *Stevens v. Jones* 40 W. 484.

Appeal dismissed because no transcript filed—defendant sought to extend time of taking appeal and to obtain transcript at public expense, *State v. White* 40 W. 428.

Appeal dismissed because of no statement of facts, *Whitehouse v. Nelson D. G. Co.* 40 W. 189.

Both parties deeded land after appeal in action to quiet title and divided proceeds, appeal dismissed, *Traves v. McLees* 32 W. 258.

Transcript and briefs filed after term but before motion to dismiss are in time, *State v. Wilson*, 7 W. 502.

Lower court re-acquires jurisdiction when appeal dismissed by consent though order not entered in supreme court, *Demers v. Sandy Spit Fish Co.* 24 W. 582.

Motion to dismiss appeal for failure to send up transcript will not avail after transcript is filed, *McNamara v. Crystal Mining Co.* 23 W. 26.

Terms imposed for delay in paying docket fee with conditional dismissal, *Griffith v. Maxwell* 22 W. 634.

Oral motion sufficient for dismissal for want of jurisdiction, *Hall v. Skavdale*, 21 W. 203.

Court will enter judgment against appellant and his bond of its own motion on appellant's own dismissal, *Allen v. Catlin*, 9 W. 603.

Where record does not show service and filing of notice and time of filing of bond appeal will be dismissed, *Kasch v. Nelson*, 20 W. 315.

Appeal will be dismissed if record contains neither verdict nor judgment, *Buckley v. Conley* 16 W. 338.

Bond filed before judgment and notice afterward appeal will be dismissed, *Laurendeau v. Fugelli*, 16 W. 367.

Dismissal for want of jurisdiction costs will be adjudged against appellant but not against sureties on bond, *Henry v. Great Northern Ry.* 16 W. 417.

Dismissal for failure to file proof of service of notice, *Best v. Best*, 22 W. 695; *Watson v. Pugh*, 9 W. 665; *Puckett v. Moody* 17 W. 609.

Dismissal because bond insufficient no judgment can be had against sureties, *Columbia etc., R. R. Co. v. Brillard* 12 W. 22.

Appellant may take voluntary dismissal without notice with costs against himself only where court has not jurisdiction because bond not filed in time, *Bash v. Eisenbels* 16 W. 700.

After court has taken jurisdiction supplemental transcript making showing can not defeat it, *Watson v. Sawyer* 12 W. 35.

Where some of the objections to sheriff's return of sale would allow a sale appeal from general order sustaining objections will not be dismissed, *Hewitt v. Root* 31 W. 312.

Ten days' notice of motion necessary—service by leaving under office door insufficient, *Rogers v. Trumbull* 31 W. 656.

Statement not settled and certified will be stricken and judgment affirmed, *City of Sprague v. Meagher* 32 W. 62.

A motion to dismiss an appeal from both a judgment and an order refusing to va-

cate a judgment will not obtain if appeal from the latter was taken in time, *In re Lamona's Estate*, 29 W. 394.

Motion to dismiss for failure of notice to some of the parties before record has been brought up or time has expired is premature, *First Natl. Bank v. Gordon Hdw. Co.* 30 W. 127.

If statement not filed in time appeal will be dismissed, *State v. Seaton* 26 W. 305.

A motion going to jurisdiction will be heard at any time, *Bank v. Carter* 10 W. 11.

Service of statement before filing appeal will be dismissed—notice to settle statement will not avail, *Erickson v. Erickson* 11 W. 76.

Dismissal for failure to file bond in time costs chargeable to appellant but not to sureties, *Grunewald v. West Coast Grocery Co.* 11 W. 478.

Party may take dismissal without costs if attorneys have appealed without authority, *Grunewald v. West Coast Grocery Co.* 11 W. 478.

City officers complying with mandamus controversy ceases and appeal will be dismissed, *Campbell v. Hall*, 28 W. 626.

When mandamus compelled publication of telephone directory and defendant published in course of business it is not entitled to dismissal because controversy has ceased, *State ex rel. Bauer v. Sunset Tel. Co.* 30 W. 676.

Pending trial of title to office of city engineer controversy ceased and appeal dismissed, *State ex rel. Gill v. Byrne* 31 W. 213.

Where term of office has expired appeal involving right to office will be dismissed, *State ex rel. Land v. Christopher* 32 W. 316.

Appeal will not be dismissed where record shows that controversy could have ceased but had not actually done so, *White Crest Canning Co. v. Sims* 29 W. 389.

Appeal from denial of mandate to compel county commissioners to canvass vote for road supervisor will be dismissed if vote canvassed before mandate denied, *State ex rel. Land v. Christopher* 32 W. 59.

Order quashing service of summons more than ninety days after complaint filed is appealable—order is final and subsequent dismissal of action does not end controversy so as to warrant dismissal of appeal, *Wagnitz v. Ritter* 31 W. 343.

In quo warranto if term of office has expired appeal will be dismissed, *State ex rel. Daniels v. Prosser* 16 W. 608.

Acceptance of fruits of judgment by co-defendant will not defeat appeal for the other, *Utterback v. Meeker* 16 W. 185.

If pending appeal in quo warranto party is appointed and confirmed in office appeal will be dismissed, *State ex rel. Coiner v. Wickersham* 16 W. 161; *Hill v. Orr* 16 W. 163.

Motion to strike exceptions to findings or statement will not be considered, *Home Savings etc. v. Burton*, 20 W. 688; *Hannegan v. Roth* 12 W. 65.

Respondent can not make second motion to dismiss appeal as to part of appellants whose rights had been overlooked, after having made motion to dismiss as to all, *Spokane etc. Co. v. Loy*, 21 W. 501.



On cessation of controversy appeal will be dismissed, *State ex rel. Scottish-Am. Mtge. Co. v. Meacham* 17 W. 429.

Motion to dismiss for failure to file transcript is too late after transcript is filed, *Johnson v. San Juan Fish Co.* 30 W. 162.

Defendant gave notice of appeal but did not proceed further, being incarcerated, the Supreme Court directed attorney general to examine case and dismissed appeal, *State v. Leonard* 17 W. 686.

If office abolished pending appeal, appeal on title to office will be dismissed, *Lynde v. Dibble* 19 W. 328.

Appeal from demurrer will be dismissed where cause has been consolidated with another because controversy has ceased, *Sether v. Clark* 24 W. 16.

Officer reinstated his appeal from order

quashing review will be dismissed, *Watson v. Merkle* 21 W. 635.

Where cessation of controversy is contingent appeal will not be dismissed, *Wood v. Seattle* 23 W. 1.

Stipulation disposing of subject matter will not defeat appeal unless so intended, *Seattle v. Liberman* 9 W. 276.

Acceptance of fruits of part of judgment not appealed from will not defeat appeal from other parts, *Hinchman v. Point Defiance Ry.* 14 W. 349.

Acceptance of fruits of judgment defeats appeal *Lyons v. Bain* 1 W. T. 482.

If defendant escapes his appeal will be dismissed, *State v. Handy* 27 W. 469.

Error that could have been urged on first appeal can not be urged on second appeal, *Smith v. Seattle* 20 W. 613.

**§7319. Hearing of Motion—Amendments.** §19. If the supreme court on the hearing of any such motion or motions shall find the grounds or any thereof alleged, for the same to be well taken and true in effect the court may grant the same in whole or in part, but when any such motion does not go to the substance of the appeal, or to the right of appeal, and the court shall be of the opinion that the moving party can be compensated in costs, or by the imposition of other terms for any delay of the appellant which is made the ground of any such motion (except a failure to take the appeal within the time limited by law), the court, in its discretion, may deny the motion on such terms as may be just. The court shall upon like terms allow all amendments in matters of form, curative of defects in proceedings to the end that substantial justice be secured to the parties, and no appeal shall be dismissed for any informality or defect in the notice of appeal, the appeal bond, or the service of either thereof, or for any defect of parties to the appeal if the appellant shall forthwith, upon order of the supreme court, perfect the appeal.

Notice of appeal from order refusing new trial cannot be amended to include judgments in cause, *Carlson v. Vashon Nav. Co.* 102 W. 75.

Appeal bond running to wrong party not amendable, *Salvino v. Taylor Mill Co.* 102 W. 507.

Defects in bond may be amended §7297.

Failure to file notice of appeal in time cannot be excused, *Long Bell Lum. Co. v. Gaston* 78 W. 598.

Payment of filing fee, after motion to dismiss for non-payment, cures defect, *State v. Miller* 80 W. 487.

Appeal dismissed because one not a party to action signed bond, *Canal Lum. Co. v. Kong Yick Inv. Co.*, 67 W. 126.

Bond may be amended to cover "all

costs," *Roznik v. Becker*, 68 W. 63.

An appeal will be dismissed where the judgment was in favor of one of the plaintiffs, and the bond was given to the other plaintiffs, as obligees, and the same cannot be amended by filing new bond, *Bruhn v. Steffins*, 66 W. 144.

Saved appeal where notice not served on successful co-defendant, *Sipes v. Puget Sound Elec. R. Co.* 50 W. 585; *Wilson v. P. S. E. R. Co.* id. 596.

Notice filed before service and proof filed after five days good, *Reynolds v. Reynolds* 42 W. 107.

Appellant, a surety having signed, allowed to sign appeal bond at hearing of motion of dismissal, *Bloomington v. Well*, 29 W. 611.

**§7320. Second Appeal.** §20. No withdrawal of an appeal, and no dismissal which does not go to the substance of or the right to the appeal, shall preclude any party from taking another appeal in the same cause, within the time limited by law.

Second notice is abandonment of first and all filings, etc., date from second notice, *State v. Miller* 80 W. 487.

In oral argument counsel stated that first appeal had been abandoned, motion to dismiss second appeal denied, *Noble v. Whitten* 34 W. 507.

Second appeal may be taken without dismissing first, *King v. Branscheid* 32 W. 634.

Bond not filed in time in first appeal and motion to dismiss—second appeal held good, *Tatum v. Geist* 40 W. 575.

Second appeal may be taken without a

dismissal of the first, *Sligh v. Shelton & S. W. Ry.* 20 W. 16.

Supplemental transcript showing perfected appeal can not be defeated by reference to former transcript, *Embree v. McLennan* 18 W. 651.

Appeal can not be dismissed or withdrawn to deprive court of power to affirm judgment, if second appeal not taken, *Agassiz v. Kelleher* 9 W. 656; *Post v. Spokane* 28 W. 701.

Premature appeal may be abandoned and another taken at proper time, *Griffith v. Maxwell* 20 W. 403.

§7321. **What Is Reviewable.** §21. Upon an appeal from a judgment, the supreme court may review any intermediate order or determination of the court below which involves the merits and materially affects the judgment, appearing upon the record sent up from the superior court. Any questions of fact or of law, decided upon trials by the court or by referees, in either legal or equitable causes, may be reviewed, when exceptions to the findings of fact or to the conclusions of law, or both, have been duly taken by either party and sent up in the record on appeal; and in actions, legal or equitable, tried by the court below without a jury, wherein a statement of facts or bill of exceptions shall have been certified, the evidence of facts shown by such bill of exceptions or statement of facts shall be examined by the supreme court de novo, so far as the findings of fact or a refusal to make findings based thereon shall have been excepted to, and the cause shall be determined by the record on appeal, including such exceptions or statement.

Record necessary to consider motion and affidavit. *Kahn v. Kahn* 103 W. 26.

Any objection not going to the jurisdiction of the court in civil or criminal cases must be made and ruled on by lower court, *State v. Murphy* 101 W. 425.

Errors considered (court rules) §73381.

Theory of case cannot be changed on appeal, *In re Lind's Estate* 90 W. 10.

Garnishee not appealing cannot urge error in refusing to dismiss garnishment, *Puget Sound L. & S. Works v. First International Bank* 91 W. 109.

Errors in instructions not considered on motion for new trial will not be considered on appeal, *State v. Neis* 74 W. 280.

Cited 75 W. 72; 76 W. 621.

Questions determined on first appeal will not be considered on second appeal, *Frostman v. Stirrat & Goetz Inv. Co.* 76 W. 592.

Findings separate from decree must be excepted to, *Harbican v. Chamberlain* 82 W. 556.

Supreme court must try case de novo when statement of facts or bill of exceptions certified up, *Lewis v. Dean* 76 W. 596.

Findings not sustained by a preponderance of the evidence, proper findings made, *Zizich v. Holman Security Inv. Co.* 77 W. 392.

Findings of the trial court will be respectfully treated but reversed if against the evidence, *Lake Gravel Co. v. Williams Co.* 85 W. 360.

Exceptions not filed in time, supreme court will consider only refusal of court to make findings, *Kitsap County Bank v. United States F. & G. Co.* 90 W. 12.

On second appeal questions on former appeal will not be reviewed, *Starr v. Long Jim* 59 W. 190.

Another action on same cause waives error in former action, *Morrison v. Ber-* not 58 W. 302.

Affidavit not brought up, order denying continuance not reviewable, *Gray v. Granger* 48 W. 442.

In cases triable de novo findings are not conclusive as verdict and supreme court will look into the evidence, *In re Garfinkle* 37 W. 650.

Points first raised in reply brief and points raised in the briefs, but not in the pleadings, will not be considered, *Stein v. Waddell* 37 W. 634.

Where no exceptions to findings whether findings support judgment is the only question, *Poor v. Cudihee* 37 W. 609.

Facts admitted and regarded sufficient

to try validity of ordinance will be so considered on appeal, *Shook v. Sexton* 37 W. 509.

Case must be tried on same theory as in court below, *Normile v. Thompson* 37 W. 465.

With no exceptions to findings the only question is the validity of the order, *In re Clifford* 37 W. 460.

On appeal from an interlocutory order subsequent showing of want of jurisdiction cannot be reviewed, *Hunter v. Wenatchee Land Co.* 36 W. 541.

Waiver of jury and trial by the court with findings and conclusions within the issues if evidence not brought up case is not reviewable, *Spencer v. Commercial Co.* 36 W. 374.

Motion for new trial not necessary before appeal, *Rowe v. Northport Etc. Co.* 35 W. 101.

This section dispenses with necessity for motion for new trial to secure review of rulings in trial of cause, *Dabcich v. Grand Lodge A. O. U. W.* 31 W. 651.

Absence of evidence to justify verdict case will be reversed, *State v. Newton*, 39 W. 491.

Affidavit for motion for new trial will not be reviewed unless embodied in bill, *Carstens v. Alaska S. S. Co.* 39 W. 229.

The weight and credibility of evidence in a criminal case are entirely for the trial judge and jury and will not be reviewed, *State v. Mann* 39 W. 144.

Exceptions to findings based on opening statement of counsel will not be reviewed if statement not preserved, *Ballard v. Mitchell* 38 W. 239.

Technical objections will be disregarded in trial de novo, *State ex rel. Fogarty v. Everett Water Co.* 38 W. 609.

Record not containing private examination of children by judge in appeal from order refusing to modify divorce decree is bad, *Dawson v. Dawson* 40 W. 656.

Supreme court will not pass on validity of nuncupative will on appeal from order dismissing petition to contest, *In re Sullivan's Estate* 40 W. 202.

Statement not containing proper exceptions retained to review court's exclusion of evidence, *Bringgold v. Bringgold* 40 W. 121.

Error regarding writ of review will not be considered in main case, *State v. Bringgold* 40 W. 12.

Findings presented and refused findings on which court bases action for dismissal in action at law should be requested, *Slayton v. Felt* 40 W. 1.



Verdict in criminal case will not be disturbed if there is evidence to sustain it, *State v. Ripley* 32 W. 182.

Questions that could have been raised on first appeal will not be considered on second appeal, *Dennis v. Kass* 13 W. 137.

Refusal to strike irrelevant matter does not affect merits on appeal, *State v. Lorenz*, 22 W. 289.

Findings in equity cases will be examined de novo (*Webster v. Thorndyke* ante p. 390 and *Roy v. Scott* p. 399 overruled), *Roberts v. Washington Nat'l. Bank*, 11 W. 550; *Furth v. Baxter*, 24 W. 608.

Exceptions are necessary to secure review, *Irvin v. Olympia Water Works*, 12 W. 112; *Rice v. Stevens* 9 W. 298; 12 W. 188, 251.

Actions tried without jury court will examine evidence de novo, *Allen v. Swerdfiger* 14 W. 461.

Review of facts in non-suit may be had though there are no findings, *Murray v. Shoudy* 13 W. 33.

That judge pro tempore was not sworn can not be raised first time on appeal, *First Natl. Bank v. Parker* 28 W. 234.

Sufficiency of complaint can not be challenged if only portion of judgment is appealed from, *Le May v. Baxter* 11 W. 649.

Objection to form of verdict in replevin can not be raised first time in Supreme Court, *Rawson v. Ellsworth* 13 W. 667.

Objection that answer contains inconsistent defenses is too late after two trials in lower court and one in Supreme Court, *Tibbals v. Mt. Olympus Water Co.* 16 W. 480.

Objection that no authority was shown for execution of deed by attorney in fact can not be raised first time on appeal, *Hartigan v. Hoffman* 16 W. 34.

Equity case is reviewable on the law without complete record, *Howard v. Shaw*, 10 W. 151.

Although there were no exceptions in criminal trial in capital cases court will review error, *Friedrich v. Territory* 2 W. 358; *State v. Friedrich* 4 W. 207.

In criminal case where there is evidence to sustain verdict court will not pass on weight of testimony, *Lybarger v. State* 2 W. 552.

The Supreme Court in criminal case will order record supplied on suggestion of diminution of record but after applicant has rested his case he will not be given rehearing on amended record, *Lybarger v. State* 2 W. 552.

That information does not follow statute and charges more than one crime can not be raised in first instance on appeal, *State v. Rogan* 18 W. 43.

Questions reviewable on appeal in habeas corpus from extradition, *In re Dove*, 21 W. 250; *In re Baker* id. 258.

Errors to be reviewed must be shown fully of record, *Griffith v. Maxwell*, 25 W. 158.

Where transcript in equity case does not contain the record but it is apparent case should be reversed such order will be granted, *Vermont Loan & Trust Co. v. Vaughan* 25 W. 219.

Verdict will not be set aside on appeal where trial court has refused to interfere and evidence tends to show necessary facts.

*State v. Elwood* 15 W. 453.

Oral instructions given must appear of record and be shown to be prejudicial to avail on appeal, *State v. Nichols* 15 W. 1.

Circumstances under which objectionable remarks of prosecuting attorney were made must be shown, *State v. Young* 13 W. 584.

Exceptions must be taken to instructions to secure consideration on appeal, *State v. Williams* 13 W. 335.

Where record contains no statement of facts every intendment will be made in favor of action in trial court, *State v. Greer* 11 W. 244.

Misconduct of prosecuting attorney in trial must be made a part of the record to be heard on appeal, *State v. Greer* 11 W. 244.

Where record does not show absence of conditions which would warrant information for murder in the first degree the defendant can not complain on appeal that trial court failed to arrest judgment, *State v. Smith* 9 W. 341.

Good character of defendant and circumstances showing innocence where there is evidence of guilt will not warrant Supreme Court in disturbing conviction of rape, *State v. Berzaman* 10 W. 277.

Error in ruling on right of argument waived can not be reviewed on appeal, *State v. Eckles* 8 W. 462.

Objection to verification of information can not be made in the first instance in the Supreme Court, *Hammond v. State* 3 W. 171.

Where only part of evidence is brought up it will be presumed that verdict is justified, *State v. Webb* 20 W. 500.

Judge certified statement refusing to incorporate or certify agreed statement, only the former will be considered, *State v. Maines* 26 W. 160.

Dismissal of action is final judgment and may be appealed from within ninety days, *Seattle L. S. & E. Ry. v. Simpson* 19 W. 628.

If superior court improperly re-opened case admitting new testimony such will be disregarded on appeal, *Washougal Transp. Co. v. Dalles etc. Nav. Co.* 27 W. 490.

Demurrer to amended complaint brought up by supplemental record will not be considered on appeal from demurrer to first complaint, *Smith v. Lamping* 27 W. 624.

All the evidence regarding findings must be brought up to secure review, *Zindorf Const. Co. v. Western Am. Co.* 27 W. 31.

In equity if ground can be found to sustain decision it will be sustained, *Sanders v. Bartlett* 24 W. 244.

In equity case evidence of findings will be reviewed, *Cleveland v. Glover* 13 W. 131.

In equity case tried on appeal de novo error in allowing former attorney for defendant to assist attorney for plaintiff and making findings different from those announced at trial will not reverse case but court will order proper judgment entered, *Security Savings Society v. Cohalan* 31 W. 266.

In law case tried by court with oral evidence findings will be given weight, *National Bank of Commerce v. Cook* 31 W. 477.

Findings will not be reversed unless

preponderance of evidence clearly against them, nor for incompetent evidence if there is sufficient competent evidence to sustain them, Funk v. Hensler 31 W. 528. Findings not necessary in dismissal of action, McCallister v. McAllister 28 W. 613.

Cited 83 W. 376; 86 W. 507.

**§7322. Judgment May Affirm, Reverse or Modify—To Be in Writing.**

§22. Upon an appeal from a judgment or order, or from two or more orders with or without the judgment, the supreme court may affirm, reverse or modify any such judgment or order appealed from, as to any or all of the parties, and may direct the proper judgment or order to be entered, or direct a new trial or further proceedings to be had; and, if the appeal is from a part of a judgment or order, may affirm, reverse or modify as to the part appealed from. The decision of the court shall be given in writing, and no cause shall be deemed decided until the decision in writing is filed with the clerk. In giving its decision, if a new trial is granted, the court shall pass upon and determine all the questions of law involved in the cause presented upon such appeal and necessary to the final determination of the cause.

Supreme court cannot review prior judgment not appealed from, Wagner v. Northern Life Co. 70 W. 210.

Mandamus will issue to compel entry of a judgment according to the mandate of the supreme court on appeal, State ex rel. Smith v. Court 71 W. 354.

In action to recover possession of land neither party showing title case will be remanded if plaintiff elects to offer further proof, Lohse v. Burch 42 W. 156.

Motion for new trial and judgment non obstante verdicto latter erroneously granted, former must be acted on, O'Connor v. Force 58 W. 215.

Findings will not be recast on appeal to harmonize them, Turner v. Cruch 58 W. 439.

New trial in lower court for erroneous instructions not excepted to sustained, Moore v. Marsh 59 W. 151.

Section applied to excessive verdict, Williams v. Spokane Falls & N. R. Co. 44 W. 363.

Verdict of jury in condemnation less than lowest witness, but they had view verdict sustained, Seattle v. Williams 41 W. 366.

Supreme court remanded case with directions for new pleadings, Conneer v. Clapp 37 W. 299.

Where proceedings capable of amendment objections will not be sustained in interlocutory appeal, Belding v. Washington Cornice Co. 36 W. 549.

Where only error was allowance of \$100 attorney's fee that amount will be deducted, judgment affirmed and costs taxed to respondent, Spencer v. Commercial Co. 36 W. 374.

The supreme court will not disturb an excessive sentence in criminal case, State v. Van Waters 36 W. 358.

On trial de novo on appeal judgment may be sustained on different grounds than these assigned by the trial judge, James v. James 35 W. 650.

Defendant on appeal may maintain that action would not lie and it would be idle to order new trial, Abbott v. Thorne 34 W. 692.

Verdict for \$1,500 for injury to arm of laborer not excessive, Selby v. Vancouver Water Wks. Co. 32 W. 522.

Verdict for \$3,500 for alienation of husband's affections held not excessive, Stanley v. Stanley 32 W. 489.

Verdict sustained on evidence of inter-

ested party only when more evidence against it, Stanley v. Stanley 32 W. 489.

Divorce decree will not be reversed where evidence conflicting, Long v. Long 38 W. 218.

Finding of deed a mortgage not reversed because evidence conflicting, Deeg v. Ettleson 38 W. 241.

Divorce decree will not be reversed if there is conflict in the evidence, Miller v. Miller 38 W. 605.

Findings will not be disturbed if evidence conflicting, Furth v. Kraft 25 W. 590.

Verdict for \$10,000 for permanent personal injury is reasonable, Columbia Co. v. Hawthorne 3 W. T. 353.

Findings will not be disturbed unless clearly against the evidence, Riddell v. Brown 25 W. 514.

Where both parties appeal on questions of fact court may not re-examine case and affirm judgment without costs to either party, Toklas v. Wirtz 26 W. 702.

Where record in divorce case is not sufficient to enable Supreme Court to enter decree cause will be remanded with instructions to lower court, McAllister v. McAllister 28 W. 613.

Judgment will not be reversed for erroneous immaterial findings, Townsend Gas & E. Co. v. Hill 24 W. 469.

In mechanic's lien foreclosure admission of evidence of work done on other houses of defendant is harmless error, Powell v. Nolan 27 W. 318.

Judgment will not be reversed when judgment is for defendant though judgment should have been for nominal damages for plaintiff Johnson v. Cook 24 W. 474.

With substantial conflict in testimony findings will not be disturbed, Boardman v. Hager 24 W. 487.

Where the court commits error in admitting evidence it will not be presumed cured by instructions, Spokane etc. Copper Co. v. Colfelt 24 W. 568.

Where there is evidence verdict will not be disturbed, Parker v. Third St. & S. Ry. 24 W. 646; Miller v. Dimon id. 648.

Findings against the evidence will be reversed, Ranahan v. Gibbons 23 W. 255.

Findings adverse to plaintiff in divorce will not be disturbed unless clearly wrong, Bounds v. Bounds 23 W. 593.

Verdict will not be disturbed if substantial evidence supports it. Reiner v. Crawford 23 W. 669.



Verdict will not be disturbed where evidence conflicting, *Graff v. Gottstein* 22 W. 287; *Smith v. Buckman* 22 W. 299.

Judgment reversed because indefinite without costs to either party, *Goss v. Blalock* 21 W. 75.

Defendant can not predicate error because judgment is on answer rather than complaint, *Ach v. Carter* 21 W. 140.

Verdict in criminal case will not be disturbed though court not wholly satisfied with evidence, *State v. Maldonado* 21 W. 653.

Where evidence conflicting verdict will not be disturbed, *Swadling v. Barneson* 21 W. 699.

Supreme Court will not disturb verdict though it is believed to be wrong, *Johnson v. McCart* 24 W. 19.

Verdict will not be disturbed if evidence conflicting especially if new trial has been passed upon, *Sieber v. Spring Brook Trout Farm* 19 W. 49; *McDougall v. Walling* 19 W. 80.

When burden of proof was improperly imposed on defendant plaintiff can not on appeal contend that evidence is insufficient, *Bellingham Bay Imp. Co. v. New Whatcom* 20 W. 231.

Findings will not be disturbed unless clearly against the evidence, *Washington D. & I. Co. v. Partridge* 19 W. 62.

Objection that pleading does not show tender kept good can not be raised first time on appeal, *Moran Bros. Co. v. Northern Pacific Ry.* 19 W. 266.

Verdict that deed is mortgage will not be disturbed when there is substantial evidence, *Snyder v. Parker* 19 W. 276.

Verdict of murder in second degree sustained, *State v. Erving* 19 W. 435.

Record susceptible of two constructions lower court will be sustained, *Seattle v. Whitworth* 18 W. 126.

When judgment directed Superior Court may determine matters not included, *Herrick v. Niesz* 18 W. 132.

Pending appeal co-defendant was discharged and question was raised on appeal conclusively, *Taake v. Seattle* 18 W. 178.

When evidence evenly divided findings will not be disturbed, *Golden v. Bullion Mining Co.* 18 W. 183.

Where evidence evenly balanced and clear proof is required judgment will be reversed, *Ordway v. Downey* 18 W. 412.

Objection to form of verdict can not be raised first time on appeal, *McClellan v. Gaston* 18 W. 472.

Where verdict is right though instructions wrong judgment will not be reversed, *Kellogg v. Cook* 18 W. 516.

Verdict will not be disturbed though evidence appears the other way, *Anderson v. White* 18 W. 658.

Evidence contradictory Supreme Court will not disturb verdict, *Du Clos v. Batcheller* 17 W. 390.

Where there is no evidence to sustain verdict case will be reversed, *State v. O'Hara* 17 W. 525.

Verdict for \$40,000 for death by wrongful act should have been reduced to \$25,000, *Walker v. McNeill* 17 W. 582.

Verdict for \$6,500 for personal injuries held not excessive, *Ogle v. Jones* 16 W. 320.

Verdict for \$15,000 for injury necessitating amputation of child's leg held not excessive, *Roth v. Union Depot Co.* 13 W. 525.

Verdict for \$30,000 for injury to child held excessive, *Mitchell v. Tacoma Ry. & Motor Co.* 13 W. 560.

Verdict to be reversed for excessive damages must be result of passion or prejudice—\$15,000 for alienation of wife's affections sustained, *Speed v. Gray* 14 W. 589.

Plaintiff was 55 years old earning \$50 a month, held that verdict for \$10,000 should have been reduced to \$6,000, *Vowell v. Issaquah Coal Co.* 31 W. 103.

Verdict for \$10,500 for personal injuries held not excessive, *Smith v. Spokane* 16 W. 403.

Where verdict is right case will not be reversed whatever error occurred, *Hardin v. Mullin* 16 W. 647.

In case of judgment by Supreme Court that partner appellant has lien for advances on property, lower court can not order conveyance of part of property to respondent on his paying proportion of indebtedness, *Soules v. McLean* 15 W. 22.

Verdict plainly right errors are to be disregarded, *Secor v. Oregon Imp. Co.* 15 W. 35.

In criminal case where there is evidence tending to prove every material fact verdict will not be disturbed, *State v. Murphy* 15 W. 98.

Equity case will not be reversed for technical defects of pleadings when judgment is correct, *Mason v. McGee* 15 W. 272.

Judgment is final and injunction will not lie to restrain enforcement until case can be retried at instance of losing party, *Cochrane v. Van De Vanter* 13 W. 323.

Court will not hesitate to substitute its judgment for that of lower court when testimony reported by referee—judgment for less amount, *Seattle v. Parker* 13 W. 451.

Findings will not be disturbed unless there is preponderance of evidence against them, *Scott v. Bourn* 13 W. 471.

Verdict will not be disturbed when there is conflict especially when lower court has refused to set it aside, *Miller v. Braun* 13 W. 516.

When evidence same in second trial judgment of Supreme Court is the law of the case, *Furth v. Snell* 13 W. 660.

Verdict will not be disturbed no matter how much preponderance against it, *Bucklin v. Miller* 12 W. 152.

When verdict is right erroneous instructions will not reverse case, *Davis v. Gilliam* 14 W. 206.

Case will not be reversed on technical questions of practice, *Delameter v. Smith* 14 W. 261.

Decision of Supreme Court does not apply to new facts, *Hughes v. Bravinder* 14 W. 304.

Reversal of judgment in mechanic's lien foreclosure will not affect personal judgment against contractor who has not appealed, *Littell v. Miller* 8 W. 566.

Judgment of Supreme Court that cause of action was good but remedy wrong is conclusive as to cause in subsequent application of proper remedy, *State ex rel. Abernethy v. Moss* 13 W. 42.

Findings in equity will be sustained if there is competent evidence though incompetent evidence has been admitted, *Davies v. Cheadle* 31 W. 168.

Findings are not controlling when evidence is by deposition, *Shead v. Moore* 31 W. 283.

Jury found new contract had been made, held, instructions as to old contract was harmless error, *Anderson v. McDonald* 31 W. 274.

When preponderance not clearly against findings they will not be disturbed, *Jordan v. Coulter* 30 W. 116.

Case will be reversed for error in law in jury trial however facts are decided, *Mc Nicol v. Collins* 30 W. 318.

Where there is no showing of passion or prejudice and lower court has refused to interfere the Supreme Court will not disturb verdict, *Morton v. Moran Bros. Co.* 30 W. 362.

Conclusions will not be disturbed though findings not complete if evidence not brought up, *Gay v. Havermale* 30 W. 622.

**§7323. Damages for Delay or if Stay Has Been Had. §23.** Upon the affirmance of any judgment or order for the payment of money, the collection of which, in whole or in part, has been stayed by an appeal bond as in this act provided, the court may award to the respondent damages upon the amount superseded; and, if satisfied by the record that the appeal was taken for delay only, the court must so award such damages, not exceeding fifteen per cent. of the sum by such judgment or order recovered or directed to be paid, as will effectually tend to prevent the taking of appeals for delay only.

Damages not allowed where delay not shown, *Hallidie Machinery Co. v. Hayden etc Co.* 56 W. 11.

Special damage must be shown if appeal taken for delay from money judgment, *Wheeler v. Commercial Inv. Co.* 22 W. 546.

Judgment will not be reversed for error if substantial rights have not been affected, *Gray v. Washington Power Co.* 30 W. 665.

Where two judgments have been entered the latter to correct the first but does not refer to it the Supreme Court on reversal will reverse both judgments, *State v. Denham* 30 W. 643.

Appellant and his bond liable only on affirmance on part appealed from, *Titlow v. Oatmeal Co.* 16 W. 676.

Action against master and servant for negligence of the latter. Servant discharged in lower court master will be discharged on appeal, *Doremus v. Root* 23 W. 710.

Judgment for five dollars more than complaint will be remitted but appellant will not be allowed costs, *Belle City Mfg. Co. v. Kemp* 27 W. 111.

Court may grant leave to attack judgment it has affirmed, *Post v. Spokane* 28 W. 701.

When damages can not be ascertained party will be left to action on the bond, *Blair v. Cassin* 19 W. 127.

Damages allowed, *Dennis v. Kass* 13 W. 137.

**§7324. Judgment Against Sureties on Bond. §24.** Upon the affirmance of a judgment or [on] appeal for the payment of money, the supreme court shall render judgment against both the appellant and his sureties in the appeal bond for the amount of the judgment appealed from (in case the bond was conditioned so as to support such judgment) and for the damages and costs awarded on the appeal; and in any other case of affirmance the supreme court shall likewise render judgment against both the appellant and his sureties in the appeal bond for the amount recoverable according to the condition of the bond, in case such amount can be ascertained by the court without an issue and trial.

Judgment against sureties on money judgment only—power of superior court—remedy, *Empson v. Fortune* 102 W. 16.

Death of surety on supersedeas bond does not prevent summary judgment, *Olson v. Seldovia Salmon Co.* 89 W. 547.

Judgment in divorce changed on appeal from specific property to money, judgment entered against supersedeas bond, *Willson v. Willson* 86 W. 50.

No recovery can be had on bond when appeal dismissed for want of jurisdiction, *Davis v. Huth* 43 W. 383.

Obligee in supersedeas in forcible entry

and detainer on affirmance may recover rents pending appeal, *Hinckley v. Casey* 54 W. 34.

On dismissal superior court cannot enter judgment on bond though provision gratuitously inserted, *Davis v. Virges* 39 W. 256.

Where an issue and trial necessary action must be brought in proper forum, *Carmack v. Drum* 28 W. 472.

Judgment for rental of premises will not be given in full. *Northwest etc. Bank v. Grinnell* 18 W. 69.

Respondent disregarding supersedeas can not have judgment against sureties on the bond, *Quandt v. Smith* 29 W. 311.

**§7325. Rehearing—Remittitur. §25.** If a petition for re-hearing or an appeal be filed within thirty days after the filing of the decision of the supreme court, the remittitur upon the appeal shall not be sent down to the lower court till such petition shall have been acted upon by the supreme court. But at the expiration of thirty days after the filing of the decision of any cause on appeal in case no petition for re-hearing shall be filed, or in case such a petition is filed and is denied by the court, then forthwith upon such denial, the clerk of the supreme court shall send down to the superior



court from which the appeal was taken a remittitur in the cause, which shall consist of the judgment of the supreme court, and a certified copy of the opinion of the court in case any judgment or order appealed from was reversed or modified thereby.

Points raised for first time on rehearing will not be considered, *State v. Hazzard* 76 W. 586.

Supreme court made payment a condition precedent to specific performance, superior court cannot change to lien on property, *Richardson v. Sears* 87 W. 207.

After remittitur jurisdiction ceases and later statute cannot be considered, *State ex rel Burke v. Com'rs* 61 W. 684.

Interest on judgment cannot be added by trial court, *German-Am. State Bank v. Sullivan* 50 W. 42.

Remittitur may be recalled for correction—diligence, *Port Angeles Pacific R. Co. v. Cooke* 38 W. 184.

Remittitur may be recalled—court may act without recall, *Titlow v. Oatmeal Co.* 16 W. 676.

Rehearings and hearings en banc (court

**§7326. Supreme Court May Remand or Issue Process to Execute Judgment.** §26. If the supreme court affirm or modify any judgment or order appealed from, it may remand the cause to the court below with directions to carry the same into effect, or it may itself issue the necessary process for that purpose to the sheriff of the proper county, as it may deem advisable. If the cause is remanded to the court below to have such judgment or order carried into effect, the decision of the supreme court, and its order entered thereon, upon being certified to the court below and entered on its records, shall have the same force and effect therein as if made and entered by the court below during its session. Executions issued from the supreme court shall be similar to those from the superior court, and of like force and effect, and returnable in the same time.

Affirmed decree set aside by superior court the same not being final, *State ex Hillman v. Court* 103 W. 288.

Affirmed judgment cannot be modified without permission of supreme court, even for fraud, *Godfrey v. Camp* 95 W. 674.

Defendant cited in contempt by supreme court for seizing replevined property, *State ex Union M. & S. Co. v. Thompson* 99 W. 478.

Superior court can only pursue "further proceedings" necessary, *State ex Moore v. Court* 97 W. 250.

Case must be disposed of on record before extrinsic matters can be considered, *Kawabe v. Continental Life Ins. Co.* 97 W. 257. Leave to proceed to vacate judgment granted *id.* 99 W. 214.

Court below cannot amend "judgment affirmed" to include cost surety, *Pacific*

*rules*) §7338j.

Petition for re-hearing can not present matters not formerly heard, *State v. Harding* 20 W. 556.

Until final judgment and remittitur decision may be modified, *State v. Tugwell* 19 W. 238.

Supreme Court will not direct Superior Court as to matters subsequent to appeal, *Hinchman v. Point Defiance Ry.* 17 W. 399.

Rehearing can be based only on matters in original hearing, *State ex rel. Abernethy v. Moss* 13 W. 42.

Decision of the Supreme Court will not be disturbed except for weighty reasons, *Watts v. Territory* 1 W. T. 409.

Jurisdiction ceases when remittitur is sent, *Ward v. Springfield Fire etc. Ins. Co.* 12 W. 631.

*Drug Co. v. Hamilton* 76 W. 524.

Case remanded where no findings in trial by court and no evidence brought up on appeal, *Sproul v. Houston* 42 W. 106.

Supreme court directed execution to issue and remanded case to superior court, held execution should issue from superior court, *State ex rel. Jefferson County v. Hatch* 36 W. 164.

Failure of trial court to follow judgment of supreme court is basis of error, *Tacoma Bldg. & Savings Ass'n v. Clark* 8 W. 289.

Where case is remanded with directions to enter judgment for specified amount, judgment is law of case and interest cannot be added *German-Am. Bank v. Sullivan*, 50 W. 42.

Money paid out by receiver under order of court after notice of appeal from order is paid at peril of receiver, *Johnson v. Joslyn*, 47 W. 531.

**§7327. Restitution of Property of Appellant—Innocent Purchasers.** §27. If by a decision of the supreme court the appellant becomes entitled to a restoration of any part of the money or property that was taken from him by means of the judgment or order appealed from, either the supreme court or the court below may direct an execution or writ of restitution to issue for the purpose of restoring to the appellant his property, or the value thereof. But property acquired by a purchaser in good faith, under a judgment subsequently reversed, shall not be affected by such reversal.

No power of restitution if dismissed for want of jurisdiction, *State ex rel Huston v. Big Bend Land Co.* 100 W. 425.

Purchaser in good faith, sale will not be set aside for minor represented by guardian ad litem who did not appeal, *Prince v. Mottman* 84 W. 287.

Purchaser is not affected by reversal as to priorities among liens, *Hinchman v. Point Defiance Ry.* 17 W. 399.

Purchaser acquiring property through judgment reversed has no title, *Singly v. Warren* 18 W. 434.

Judgment in favor of creditor was re-

versed after he had purchased at execution sale, goods were replevined from him by third party but action failed, held creditors' execution in replevin suit could be enjoined, *Standard Furniture Co. v. Van Alstine* 31 W. 499.

Purchaser in good faith takes title though there is fraud in sale, *Hatch v. Ferguson* 52 Fed. Rep. 833.

Upon reversal of judgment against defendant he is not entitled to judgment on his cross-complaint where not urged in appellate court and evidence below meagre. *Libby v. Packwood*, 11 W. 176.

Lower court may not interfere with judgment of appellate court, *State v. Sup. Ct.*, 8 W. 591.

**§7328. Appeals Shall Not Abate.** §28. The death of a party after the rendition of a final judgment in the superior court shall not affect any appeal taken, or the right to take an appeal; but the proper representatives in personalty or realty of the deceased party, according to the nature of the case, may voluntarily come in and be admitted parties to the cause, or may be made parties at the instance of another party, as may be proper, as in case of death of a party pending an action in the superior court, and thereupon the appeal may proceed or be taken as in other cases; and the time necessary to enable such representatives to be admitted or brought in as parties shall not be computed as part of the time in this act limited for taking an appeal, or for taking any step in the progress thereof.

If substitutions not made remittitur may be recalled even after term, *Gordon v. Hillman* 102 W. 411.

Criminal action abated by death of defendant, *State v. Furth* 82 W. 665.

Actions shall not abate, §8274.

Administrator substituted after death of appellant, *Wright v. Nor. Pac. R. Co.* 45 165.

Grantee in case of lis pendens may continue appeal, *Trumbull v. Jefferson County* 60 W. 479.

Parties cannot be substituted in action by one party for many parties—appeal bond insufficient, *Hight v. Batley* 32 W. 165.

**§7329. Costs—Attorney's Fees, Briefs, Folio Charge.** §29. Costs shall be allowed in the supreme court, irrespective of any costs taxed in the case in the court below, to the prevailing party in the supreme court, on any appeal in any civil action or proceeding, as follows: The fees of the clerk of the supreme court paid by the prevailing party, the fees of the clerk of the court below for preparing, certifying and sending up the records on appeal or any supplementary record, paid by the prevailing party, and twenty-five dollars attorneys' fees, besides his necessary disbursements for the printing of briefs, and any sum actually paid or incurred by the prevailing party as stenographer's fees, not exceeding ten cents a folio, for making a transcript of the evidence or any part thereof included in the bill of exceptions or statement of facts; but when the judgment of the court below shall be affirmed in part and reversed in part, or affirmed as to some of the parties and reversed as to others, or modified, the costs shall be in the discretion of the court; and when the judgment is reversed and a new trial ordered the court may in its discretion direct that costs of the prevailing party shall abide the result of the action. When in the opinion of the supreme court a brief of the prevailing party shall be unnecessarily long, or improper in substance, the court may in its discretion order the disallowance as costs of any part or the whole of the disbursements for printing the same.

Costs for only part of voluminous record allowed, *Colkett v. Hammond* 101 W. 416.

Certiorari will not lie to review error of superior court suspending payment of costs in sums of less than \$200, *State ex Simpson v. Smith* 102 W. 574.

Cost bills (court rules) §7338k.

Reversal as to one of two parties, both parties successful awarded one-half his costs, *Thomas v. Lee* 74 W. 286.

Cross-appeals, both successful, no costs to either party, *Wiley v. Hart* 74 W. 142.

Wife entitled to costs of judgment sought against her and judgment only against community, *Williams v. Hitchcock* 86 W. 536.

Briefs on glazed paper, no costs allowed, *Gordon v. McClanahan* 78 W. 531.

New trial, both parties in error, costs to abide result of action, *Phoenix Assur. Co. v. Columbia & P. S. R. Co.* 94 W. 323.

Awarding costs on appeal is largely in

the court's discretion, *Michaelson v. Seattle*, 63 W. 230.

Injunction to road modified but costs not allowed because proper decree not suggested, *Hart v. Seattle* 42 W. 113.

Appellants cannot take remedy tendered below to avoid costs, *State ex rel. Hallett v. Seattle Lighting Co.* 60 W. 81.

Costs will not be allowed on affirmance if respondent fails to file brief after being granted permission, *McCormick v. Sorenson* 58 W. 107.

Voluminous brief disallowed, *Brown v. Kildea* 58 W. 184.

Condemnor must pay costs on appeal though successful, *Grays Harbor Boom Co. v. Lonsdale* 54 W. 83.

Respondent not approving is not entitled to costs on affirmance, *Johnson v. Collier* 54 W. 478.

Costs on appeal to appellants and in superior court to respondents, *Schmidt v.*



Olympia L. & P. Co. 46 W. 361.

Defects not raised in court below defeated costs, Ramsdell v. Ramsdell 47 W. 444.

Costs not allowed respondent on motion to dismiss after appellant makes motion, Bleakly v. Wilcox 49 W. 164.

Costs allowed if error not called to attention of court below, Olympia Brew. Co. v. Pioneer Mut. Ins. Ass'n 53 W. 16.

Ten cents per folio taxable—clerk's average, Nelson v. McLellan 34 W. 181.

Appellant successful in criminal case costs are taxable to the state, State v. Rutledge 40 W. 9.

Costs allowed respondent if appeal abandoned—when only one attorney fee against several appellants, In re Seattle 40 W. 450.

Reply brief not filed in time is not taxable, Stowe v. La Conner T. & T. Co. 39 W. 28.

Cost bill must be verified and filed within 10 days—amount allowed for transcript, briefs and folio charge, Clark v. Eltinge

39 W. 696.

New trial order affirmed, costs to abide result on new trial, O'Toole v. Phoenix Ins. Co. 39 W. 688.

Superior court cannot allow costs on appeal in forma pauperis, State ex rel. Langhorne v. Superior Court 32 W. 80.

Appeal affirmed as to part of appellants costs will be divided, Trumbull v. Jefferson County 37 W. 604.

Remittitur will be recalled to correct judgment void as to costs because defendant had not been served, Bell v. Waudby 7 W. 203.

Respondent prevailing on appeal is not entitled to costs for printing findings when appellant has printed them, Diering v. Holcomb 26 W. 588.

Stenographer's notes in preparing statement are not proper item of costs, Brown v. Winehill 4 W. 98.

Defendant did not appear and plaintiff was granted relief sought but was not allowed costs, Haywood v. Miller 14 W. 660.

### §7330. Appeal Is Stay in Criminal Action—Credit for Confinement.

130. An appeal by a defendant in a criminal action shall stay the execution of the judgment of conviction. In case the defendant has been convicted of a felony, and has been unable to furnish the bail bond required by section thirty-one of this act, pending the appeal, the time during which he remains in the jail of the county from which the appeal is taken, shall be deducted from the term for which he was theretofore sentenced to the penitentiary, if judgment against him be affirmed.

Appeal in habeas corpus will not stay criminal case, State v. Fenton 30 W. 325.

If prisoner has been sent to penitentiary he will be returned, In re Norris 26 W. 323.

Defendant entitled to credit though appeal dismissed for want of prosecution, In re Bojar 7 W. 355.

§7331. Bail on Appeal—Former Bail. §31. In all criminal actions, except capital cases in which the proof of guilt is clear or the presumption great, upon an appeal being taken from a judgment of conviction, the court in which the judgment was rendered, or a judge thereof, must, by an order entered in the journal or filed with the clerk, fix and determine the amount of bail to be required of the appellant; and the appellant shall be committed until a bond to the State of Washington in the sum so fixed be executed on his behalf by at least two sureties possessing the qualifications required for sureties on appeal bonds by section ten of this act, such bond to be conditioned that the appellant shall appear whenever required, and stand to and abide by the judgment or orders of the appellate court, and any judgment and order of the superior court that may be rendered or made in pursuance thereof. If the appellant be already at large on bail, his sureties shall be liable to the amount of their bond, in the same manner and upon the same conditions as if they had executed the bond prescribed by this section: but the court may, by order, require a new bond in a larger amount, or with new sureties, and may commit the appellant until the order be complied with.

Verdict for manslaughter on charge of defendant receives a verdict of manslaughter, bail allowed; appeal by state is not stay against bail, State ex. McCrehead v. Chapman, 64 W. 140.

State v. Chapman, 64 W. 140.

Upon a trial for murder, in which the

Bail is not allowed in appeal in extradition cases, In re Foye 21 W. 250.

§7332. Appearance by Counsel—Argument. §32. Personal appearance of any party in the supreme court shall not be necessary on appeal in either civil or criminal actions. In criminal actions the defendant shall be entitled to close the argument.

§7333. Judgment in Criminal Cases. §33. When in a criminal action the judgment against the defendant is reversed, and it appears that no offense whatever has been committed, the supreme court must direct that the defendant be discharged; but if it appear that the defendant is guilty of an offense, although defectively charged in the indictment or information, the supreme court, if the defendant is in prison, must direct the keeper of the

place of confinement to cause the prisoner to be returned to the sheriff of the proper county, there to abide the order of the superior court thereof; and such keeper shall be entitled to the usual fees therefor.

Is declaration of settled rule of procedure. State v. George 84 W. 113.

When personal appearance necessary in trial court, §§9173, 9372.

Defendant not entitled to discharge on reversal for error at trial if any crime is charged, State v. Riley, 36 W. 441.

**§7334. Credit for Confinement on Second Conviction.** §34. If a defendant who has been in prison during the pendency of an appeal, upon a new trial ordered by the supreme court, shall be again convicted, the period of his former imprisonment shall be deducted by the superior court from the period of imprisonment to be fixed on the last verdict of conviction.

Sentence commences when delivered at penitentiary, §4392.

**§7335. Form of Process—Transcript Sufficient.** §35. A transcript of any order or judgment, or both, of the supreme court, certified under the seal of the court, shall be sufficient authority to any court, or to any officer on whom it may be served, to proceed according to its mandate.

**§7336. The Supreme Court Shall Hear and Determine all Causes on the Merits.** §36. The supreme court shall hear and determine all causes removed thereto, in the manner hereinbefore provided, upon the merits thereof, disregarding all technicalities, and shall, upon the hearing, consider all amendments which could have been made as made.

This section supplies facts sufficient to constitute a cause of action, Messick v. National Council, etc. 103 W. 143.

Complaint considered amended, Messick v. National Council, etc. 103 W. 143.

Failure to separately state cause of action not fatal, Cascade Lum. & S. Co. v. Wright 99 W. 421.

Complaint alleged unqualified ownership of check, answer showed it was collateral, not fatal, German-Am. Bank v. Wright 85 W. 460.

Complaint for libel did not allege falsity of publication but negatived the facts and answer set up truth curing defect, Wilson v. Sun Pub. Co. 85 W. 503.

Pleadings are as broad as the evidence, Sjong v. Occidental Fish Co. 78 W. 4; affirmed and applied, Matzger v. Arcade Bldg. Co. 80 W. 401; Winston v. Terrace 78 W. 146.

Pleadings deemed amended to conform to proof, Kneeland Inv. Co. v. Berendes 81 W. 372.

Affirmative defense undenied will be considered denied after trial, Yeisley v. Smith 82 W. 693.

Denial of motion to make more definite and certain disregarded if party not misled, Just v. Littlefield 87 W. 299.

In action to foreclose laborer's lien, record failing to show lien notice was served, disregarded at hearing in supreme court—Incomplete findings in equity sufficient, Cook v. Washington-Oregon Corporation 84 W. 68.

Mistaking remedy, after evidence in pleadings considered amended, Van Schuyver & Co. v. International M. & B. Co. 88 W. 610.

Creditor levied and sold property conveyed by husband to wife, attacking deed by a direct action, failing to allege or prove fraud there can be no amendment, Crandall v. Lee 89 W. 115.

Amendment of complaint considered as made to conform to evidence admitted without objection, Godfrey v. Olson, 68 W. 59.

Court shall hear case on merits, §§8340.

Supreme court shall consider all amendments made, Lobb v. Seattle Renton & So. R. Co. 48 W. 238.

Setting cause for trial before issues made up is harmless error, there being fair trial, Ferrandini v. Bankers Life Ass'n 51 W. 442.

Failure to allege negligence as proximate cause of injury not fatal, Selby v. Vancouver Water Wks. Co. 32 W. 522.

Absence of verification to complaint is technical defect, Smith v. Newell 32 W. 369.

Defective statement of cause of action is not cause of reversal, Green v. Tidball 26 W. 338.

Error will be presumed prejudicial—waiver of error, Collett v. Northern Pac. Ry Co. 23 W. 600.

Defective plea of statute of limitations considered amended in supreme court, Kinkaid v. Holmes & Bull Furn. Co. 24 W. 216.

Incompetent evidence admitted before jury in advisory verdict is immaterial if court has made proper findings, Peck v. Stanfield 12 W. 101.

In equity pleadings will be considered amended to conform to facts proved, Hilphrey v. Strobach 13 W. 128.

In contest of will amendment of pleading considered made, Richardson v. Moore 30 W. 406.

If cause has been tried on issues some of which were not pleaded the parties can not complain, Shoemaker v. Stimson 16 W. 1.

Fee simple title alleged and less title proven pleadings considered amended on appeal, Olson v. Seattle 30 W. 687.

Dismissal of appeal from order discharging attachment affirms the order, Brady v. Onffroy 37 W. 483.

Complaint amended at time judgment filed, Gritman v. U. S. Fidelity etc. Co. 41 W. 77.

Superior courts can not certify cases to supreme courts, Munson v. Mudgett 14 W. 662.



**§7337. Rules of Court. §37.** The supreme court is hereby authorized to make all needful rules and regulations not inconsistent with law concerning practice and procedure in cases appealed to the supreme court.

**7338. Method of Appeal Exclusive. §38.** The mode provided by this act for appealing cases to the supreme court, and for securing a revision of the same therein, shall be exclusive, and shall supersede all other methods heretofore provided. But no rights acquired under statutes which are abrogated by this act shall be lost by reason of the passage of this act, and all appeals pending when this act takes effect may be prosecuted to their determination as if this act had not been passed.

## RULES OF THE SUPREME COURT.

(Adopted June 8, 1913, Under §8659.)

**§7338a. Court Records and Books—Rule I.** The Clerk of the Supreme Court shall keep the following books and records: 1. Journal. 2. Record of opinions. 3. Appearance docket. 4. Motion docket. 5. Fee book. 6. General index of cases. 7. In addition to the foregoing, the said clerk shall keep books in which shall be stated proper accounts of all moneys received and disbursed.

**§7338b. Docket Fees—Rule II.** The Clerk of the Supreme Court will not file any transcript until the appellant shall have deposited with him the statutory docket fee, and he will not file any paper in any original motion, application or proceeding until the moving party shall have deposited such fee.

**§7338c. Transcript and Statement of Facts—Rule III.** 1. Every transcript shall be plainly typewritten, with a black record ribbon, or printed, on paper of good quality of the size of legal cap, and be free from interlineations and erasures, and be duly paged and prefixed with an alphabetical index to its contents, specifying the page of each separate paper, order or proceeding, and have at least one blank fly leaf. Every statement of facts and bill of exceptions must also be printed or typewritten, and indexed in the same manner, and when typewritten none other than a black ribbon copy shall be used.

2. Every transcript consisting of more than fifty leaves shall be bound under the direction of the Clerk of the Supreme Court.

**Transcripts—Omissions—Rule IV.** If any paper or part of the record directed to be sent up has been omitted from the transcript in any case, such omission may be supplied at any time before the cause is assigned for hearing by any party, without leave, by filing a properly certified transcript of such paper or part of the record with the Clerk of the Supreme Court, and at the same time giving the opposite party notice thereof. After a cause has been assigned for hearing, a paper or part of the record can be supplied only by leave of court.

**Transcripts—How Certified—Rule V.** 1. Transcripts must be certified by the Clerk of the Superior Court in substantially the following form:

State of Washington, ..... County, ss.

I, ....., Clerk of the ..... Superior Court, do hereby certify that the foregoing is a full, true and correct transcript of so much of the record and files in the above entitled cause as I have been directed by the appellant to transmit to the Supreme Court.

In testimony whereof, I have hereunto set my hand and the seal of said Superior Court this ..... day of ....., 19.....

(SEAL)

....., Clerk.  
By....., Deputy.

2. Supplemental records shall be certified by the Clerk of the Superior Court substantially in the same manner.

Statement not indexed, will be stricken, Davidson v. King 103 W. 379.

**§7338d. Abstracts—Amendment—Rule VI.** It is ordered that Rule VI of the Supreme Court of the State of Washington, pertaining to the number of abstracts, be so amended as to provide that, in every case in which an appeal has heretofore been taken or shall hereafter be taken, six copies of a legible typewritten abstract of the record, or thirteen copies of a printed abstract, where the same is printed, shall be filed with the Clerk of the

Supreme Court along with the briefs of the party preparing the same. The abstracts to be as now provided by Rule VI. (Adopted December 30, 1914.)

**Rule Before Amended.** In every case in which an appeal shall be taken after June 12, 1913, thirteen copies of a legible typewritten abstract of the record shall be filed with the Clerk of the Supreme Court along with the briefs of the party preparing the same. The typewritten abstract shall be in the same form as the transcript in the cause, shall be indexed, and shall contain appropriate references by pages to the transcript or statement of facts. Printed abstracts, bound separately from the printed briefs, but of the same size, type and form as the printed briefs, will be given the same effect by the court as typewritten abstracts. The abstract shall be substantially in the following form:

(The form outline suggested covers only a trial by jury in a civil action. In causes tried by the court, in criminal causes, and all special proceedings, the same general outline should be followed. In all cases, follow the events of the trial in their chronological order. Do not omit the appropriate captions or headings. Use the abbreviations Tr. for transcript, St. for statement of facts, p. for page. Append to the abstract in all instances appropriate references to the transcript or statement of facts, showing the page on which the paper abstracted will be found. Do not in any instance abstract more of the proceeding than is necessary to show the error involved. The cardinal rule to be observed is, present everything necessary to an understanding of the questions raised on the appeal in a brief and concise manner, and omit everything else.)

(On the cover.)

IN THE SUPREME COURT OF THE STATE OF WASHINGTON.

JOHN DOE,

Appellant (or Respondent),

v.

RICHARD ROE,

Respondent (or Appellant).

#### APPELLANT'S ABSTRACT OF RECORD.

'Appeal from the judgment of the superior court of ..... County.  
Hon. ...., Judge.

A. B. & C. D.,

Attorneys for Appellant.

(Address)

E. F. & G. H.,

Attorneys for Respondent.

(Address)

(On the second page.)

#### INDEX.

(Here insert a complete index to each separate matter contained in the abstract, showing the page of the abstract on which it is found.)

(On the third and succeeding pages.)

#### COMPLAINT.

On the ..... day of ....., 19....., the plaintiff served upon the defendant a complaint stating his cause of action as follows:

(Set out all of the complaint necessary to show the nature of the action and to an understanding of the questions presented on the appeal, and no more. Omit all formal parts, unless error is based thereon. In setting out exhibits attached to the complaint, omit all formal or irrelevant parts. Usually a general description of the exhibit will be sufficient.)

#### SUMMONS.

The summons and the return thereon are as follows:

(Insert so much of summons and return as may be necessary to show the error based thereon. If no error is claimed with reference to either the summons or return, omit entirely any reference thereto.)

#### MOTIONS.

On the ..... day of ....., 19....., the defendant appeared (generally or specially) in the action and moved (to quash the service, or to make the complaint more definite and certain, etc.) basing his motion on the following grounds.

(Here state the grounds of the motion.)

Thereafter, and on the ..... day of ....., 19....., the same was submitted to the court and the following ruling was made thereon:

(Set out the ruling of the court, giving only the substance unless the entire entry is necessary to show the error claimed. If no error is predicated on the motion, omit all reference thereto.)



DEMURRER.

On the ..... day of ....., 19....., the defendant demurred to the complaint on the following grounds:

(Set out only the ground of demurrer on which the error is predicated.)

On the ..... day of ....., 19....., the same was submitted to the court and the following ruling made thereon:

(Set out the substance of the journal entry containing the ruling. Omit all formal parts unless necessary to show the error claimed. If no error is based on the ruling on the demurrer, omit any reference thereto.)

ANSWER.

On the ..... day of ....., 19....., the defendant answered the complaint as follows:

(Set out so much of the answer as may be necessary to make clear the issues and present the questions raised on the appeal. If affirmative defenses are pleaded, set out only the substance of them, unless a literal copy is necessary to show the error claimed. If motions or demurrers were made to the answer, and error is predicated on the rulings made thereon, set out the same under the caption, "MOTION TO ANSWER," "DEMURRER TO ANSWER," as the case may be, following the form suggested for motions and demurrers directed against the complaint.)

REPLY.

On the ..... day of ....., 19.....; the plaintiffs replied to the answer as follows:

(Here set out the substance of the reply. If motions or demurrers were directed against the reply, and error is based on the rulings thereon, set out the same under the caption, "Motion to Reply," "Demurrer to Reply," as the case may be, following the form suggested for motions and demurrers directed against the complaint.)

TRIAL—EXAMINATION OF THE JURY.

On the ..... day of ....., 19....., the cause was tried by a jury where the following proceedings were had:

JOHN STYLES being called as a juror and duly sworn to make true answers touching his qualifications to sit as a juror, answered the interrogatories propounded to him as follows:

(Set out his answers in narrative form, unless the questions propounded are necessary to an understanding of the objections made to his qualifications. If no question is made on the appeal as to the qualification of any juror, omit all reference to the method by which the jury was impaneled; state simply that a jury was impaneled and sworn.)

STATEMENT OF COUNSEL.

After which A. B., of the attorneys for the plaintiff, made the following statement to the jury:

(Set out the statement if necessary to an understanding of any question raised on the appeal. If not, omit all reference to the statement. Proceed in the same manner through all of the preliminary proceedings had prior to the commencement of the introduction of testimony, in so far as the same is necessary to an understanding of some question raised on the appeal.)

EVIDENCE.

TITUS OATES was called and sworn as a witness on behalf of the plaintiff and in answer to interrogatories propounded to him by A. B., of the attorneys for the plaintiff, testified as follows:

(Set out his direct testimony in narrative, unless the question and answer is necessary to an understanding of the error claimed. If the witness identifies an exhibit, and the exhibit is introduced in evidence, insert a description of the same.)

On CROSS-EXAMINATION by C. D., of the attorneys for the defendant, he further testified as follows:

(Set out his cross-examination, following the form suggested for his direct testimony.)

On RE-DIRECT EXAMINATION, he further testified as follows:

(Set out the same. Continue in the same manner with respect to each witness sworn on behalf of the plaintiff. In all cases abstract only so much of the evidence as may be necessary to show the error involved; it is necessary to abstract the evidence in full only in those cases where the entire evidence is required to show the error.)

MOTION FOR A NONSUIT.

At the conclusion of the testimony of the witness Titus Oates, the plaintiff rested, whereupon the defendant moved for (a nonsuit, or a directed verdict, challenged the legal sufficiency of the evidence, as the case may be) on the grounds that (state the grounds of the motion). The court overruled (or sustained) the motion, stating the reason for the ruling as follows:

(Set out the reasons given.)

DEFENDANT'S EVIDENCE.

MILTON GILES was called and sworn as a witness on behalf of the defendant, and in answer to interrogatories propounded to him by E. F., of the attorneys for the defendant, testified as follows:

(Set out his testimony in the manner given for abstracting the evidence of the plaintiff's witnesses.)

REBUTTAL EVIDENCE (PLAINTIFF'S).

At the conclusion of the testimony of the witness Milton Giles, the defendant rested, whereupon the plaintiff introduced the following testimony in rebuttal:

(Abstract the evidence in the manner given for abstracting evidence of the plaintiff's witnesses in chief. If the defendant offers evidence in rebuttal of that offered by the plaintiff, set the same forth with the caption, "REBUTTAL EVIDENCE (Defendant's).")

REQUESTED INSTRUCTIONS.

At the conclusion of the evidence the (plaintiff or defendant, as the case may be) requested the court to give to the jury the following instructions, namely:

(Set forth the instructions requested and refused on which the claim of error is predicated. Show in the appropriate place the exceptions taken to the refusal to give each requested instruction.)

INSTRUCTIONS GIVEN BY THE COURT.

The court instructed the jury (orally or in writing, as the case may be) as follows:

(Set out the substance of each instruction given, and the instructions in full to which exceptions are taken and on which error is predicated. Show in the appropriate place the exceptions taken to the instructions.)

ARGUMENT.

The cause was argued to the jury by the respective attorneys for the plaintiff and defendant, during which A. B., of the attorneys for the plaintiff, used the following language:

(Set out the argument to which objection is made.)

To the argument of the attorney the defendant's counsel objected for the reason (set out the reason). The court ruled thereon as follows: (Set out the ruling).

(If no error is predicated on the argument of counsel, omit any reference to the argument.)

VERDICT.

The jury retired to consider of their verdict, and thereafter on the..... day of....., 19....., returned the same into court as follows:

(Set out the body of the verdict, omitting all formal parts.)

JUDGMENT.

Upon the return of the verdict the clerk entered a judgment thereon as follows:

(Set out sufficient of the entry to show the nature of the judgment entered. If error is predicated thereon, set forth all that is necessary to show the error. Omit all formal parts.)

MOTION FOR A NEW TRIAL.

On the.....day of....., 19....., plaintiff moved (for a new trial, in arrest of judgment, for a judgment non obstante veredicto, as the case may be) basing his motion upon the following grounds: (Set out the substance of the motion.) The motion was submitted to the court on the.....day of....., 19..... The court (granted or denied) the same on the..... day of....., 19....., on the following grounds:

(If the motion is granted and a claim of error is made thereon on the appeal, set out sufficient of the entry to show the claim of error. In cases tried by jury in which the clerk does not enter judgment on the return of the verdict, recite in chronological order the proceedings leading up to and including final judgment. The nature of the judgment should be shown in every instance, but set forth the matters succeeding the verdict and preceding the judgment only when some claim of error is based thereon.)

APPEAL.

On the .....day of....., 19....., the (plaintiff or defendant) appealed from the judgment by (giving notice in open court, or by serving a written notice) and on the.....day of....., 19....., filed his bond on appeal, conditioned (as a cost bond or supersedeas bond, as the case may be) with the following named persons as sureties. (Set out the names of the sureties). The transcript on appeal was prepared and filed in the office of the clerk of the superior court on the.....day of.....



....., 19.....; the statement of facts was filed on the.....day of.....  
 ....., 19....., and served on the.....day of....., 19.....; amend-  
 ments to the statement of facts were proposed by the respondent on the  
 .....day of....., 19.....; and the statement was settled and cer-  
 tified by the trial judge on the.....day of....., 19.....

**Supplemental Abstracts—Rule VII.** 1. If the respondent is not satisfied with the appellant's abstract, he may cause to be typewritten, or printed, a supplemental abstract of the matter omitted which he deems essential to an understanding of the questions presented on the appeal. The supplemental abstract shall follow the form of the original abstract, shall refer to the page of the original abstract where the omitted matter is to be inserted, and shall contain appropriate references to the transcript, bill of exceptions, or statement of facts; Provided, however, That if, in the opinion of the Supreme Court upon the consideration of the case, the respondent's supplemental abstract was necessary to the consideration of the questions presented, and was made thus necessary by reason of the fact that the appellant's abstract did not fairly state the record or the evidence, the costs of such supplemental abstract shall be charged to the appellant regardless of the termination of the case.

2. The appellant may supplement his original abstract without leave of court at any time before the cause is assigned for argument. The supplemental abstract shall follow the form of the original abstract, shall contain appropriate references to the pages of the transcript or statement of facts where the matter abstracted can be found, and shall show at what pages of the original abstract the new matter is to be inserted. The supplemental abstract shall be served on the adverse party. After a cause has been assigned for hearing, supplemental abstracts may be filed therein only by leave of the Chief Justice.

**§7338e. Contents and Style of Briefs—Rule VIII.** 1. Briefs shall be printed throughout in plain, clear type, not smaller in size than pica, on unglazed white paper, and shall contain a clear statement of the case so far as deemed material by the party, with reference to the pages of the abstract for verification.

2. Each error relied on shall be clearly pointed out and separately discussed under appropriate designated headings: Provided, That several assignments presenting the same general questions may be discussed together.

3. In citing authorities, the titles of cases and the names and numbers of volumes must be clearly set out in each place in the brief where the case is mentioned; and in citing text books the number of the edition must be specified.

4. Briefs must be of the following dimensions, to wit: 8½ inches from top to bottom; 6½ inches from edge to edge, inclusive of the margin, which must be 1½ inches at the top, bottom and outer edge of each printed page. The cover shall be gray in color, or some color that will readily show the print. The title of the case, the designation, Brief of Appellant, Brief of Respondent, Appellant's Reply Brief, as the case may be, and the names of the attorneys appearing on the side upon which the brief is filed, with their respective addresses, shall be printed on the front cover.

5. Twenty-five copies of all printed briefs shall be filed with the clerk.

6. In case either party, after filing briefs, desires to submit additional authorities, the same shall be submitted not less than one day prior to the hearing of the appeal. Said authorities so submitted shall be typewritten or printed, and twelve copies thereof shall be filed with the Clerk of the Supreme Court, and not less than one copy served upon the adverse party.

**§7338f. Assignment of Causes—Rule IX.** 1. For the purpose of hearings in the Supreme Court, causes from the several counties will be assigned as follows: 1. Thurston. 2. Mason. 3. Lewis. 4. Chehalis. 5. Pierce. 6. King. 7. Kitsap. 8. Pacific. 9. Wahkiakum. 10. Cowlitz. 11. Clarke. 12. Skamania. 13. Snohomish. 14. Skagit. 15. Whatcom. 16. Island. 17. San Juan. 18. Jefferson. 19. Clallam. 20. Kittitas. 21. Yakima. 22. Benton. 23. Klickitat. 24. Chelan. 25. Okanogan. 26. Douglas. 27. Grant. 28. Adams. 29. Lincoln. 30. Franklin. 31. Walla Walla. 32. Columbia. 33. Asotin. 34.

Garfield. 35. Whitman. 36. Spokane. 37. Stevens. 38. Ferry.

2. Exceptions to this order may be made when public interests so require.

3. Ten days before the beginning of each session of the court the clerk shall assign for hearing in the order named in subdivision 1 of this rule any cause on the docket ready for hearing to that department of the court to which it has been apportioned by the Chief Justice. A cause on the docket of the court shall be deemed ready for hearing when it appears that the transcript is on file; and—

(a) That the appellant's opening brief, the respondent's brief, and the appellant's reply brief are on file;

(b) That the appellant's brief and respondent's brief are on file;

(c) That the appellant's brief is on file, and has been served upon the respondent for a period of thirty days or more;

(d) That the appellant's brief is on file, and all parties to the appeal have stipulated that the cause may be assigned for hearing at such session.

4. Reply briefs in any case must be filed with the clerk of the Supreme Court not later than Thursday of the week preceding the date the case is assigned for hearing. Costs for briefs filed later than such date will not be allowed by the clerk.

5. Cases ready for hearing may be submitted on briefs by stipulation, at any time.

**§7338g. Calendar—Rule X.** As soon as the cases shall have been assigned for a regular session of the court, the clerk shall print a calendar thereof, indicating at the head of each page of such calendar the department of the court to which the case has been apportioned, and shall mail a copy of the calendar to each attorney or firm having any cause thereon.

**§7338h. Arguments—Rule XI.** No more than two counsel on a side will be heard upon the argument of any question, unless the court shall direct otherwise: Provided, That each party who has appeared separately and by different counsel in the Superior Court shall, if he so desire, be heard through his own counsel. The counsel for the appellant shall be entitled to open and close the argument upon the merits in all cases. In argument of motions and all preliminary or collateral matters, the counsel for the party having the affirmative of the issue shall open and close. Arguments upon the merits shall be limited to one-half hour upon a side, and all other arguments to one-quarter of an hour upon a side, unless an extension of time be obtained from the court before the argument is commenced.

**§7338i. Errors Considered—Rule XII.** No alleged error of the Superior Court will be considered by the Supreme Court unless the same be clearly pointed out in the appellant's brief: Provided, That the objection that this court has no jurisdiction of the appeal may be taken at any time.

**§7338j. Rehearings and Hearings En Banc—Rule XIII.** 1. Every petition for rehearing or hearing en banc must be filed within thirty days after the opinion shall have been rendered, and no more than one petition for a rehearing or hearing en banc shall be filed: Provided, That the court may, in its discretion, allow any petition to be amended. The filing of a petition for rehearing or hearing en banc shall suspend the decision of the court until a ruling thereon.

2. One typewritten copy of the petition for rehearing or hearing en banc, filed with the clerk, shall be sufficient.

3. When a decision is rendered upon a petition for rehearing or hearing en banc, the clerk shall promptly notify counsel for the respective parties.

**§7338k. Cost Bills—Rule XIV.** 1. The prevailing party shall, within ten days after the filing of the opinion in a case, file with the clerk a cost bill, and serve upon the adverse party a copy thereof. If any adverse party objects to any item or items thereof, he shall serve upon the prevailing party exceptions to such cost bill, together with affidavits in support of his exceptions, if desired, and file the original, with proof of service, with the clerk of the court within ten days after service of the cost bill upon him. Whereupon the clerk shall tax the costs to which the prevailing party is entitled, and shall notify the parties of such taxation. Either party may except to the taxing of any item or items, or failure to tax the same, and shall serve such exceptions on the adverse party and file the same with the clerk within



ten days after such taxation. Said exceptions shall be heard by the court on the first motion day after the expiration of five days from the date of service of such exceptions. If the party fail to appear at such time, the court will consider such exceptions upon the affidavits on file and the records in the cause, and determine the same.

2. If no cost bill is filed and served, the clerk will tax as costs only the clerk's costs, printing of briefs at one dollar per page for the first twenty-four pages, eighty-five cents per page for the second twenty-four pages, and seventy-five cents per page for the remaining pages, the statutory attorney fee, and the cost of the transcript, statement of facts and abstracts at the rate of five cents a folio. (Adopted February 18, 1915.)

3. Where a cost bill has been served and filed in time, and no exceptions are filed, objection thereto will be deemed to have been waived.

**§7338m. Submission on Failure to Appear—Rule XV.** Where a party does not appear when the cause is called for hearing, and the appeal has been perfected, and the brief of such party shall be on file, the cause, as regards such party, shall be deemed submitted. This rule shall not preclude oral argument by the opposite party.

**Respondent Filing No Brief—Rule XVI.** Where the respondent fails to file a brief in the cause, the court will take the submission of the same by the appellant, and decide upon the merits of the appeal, if it shall appear to have acquired jurisdiction of the cause.

**§7338n. Taking Papers from Clerk's Office—Rule XVII.** No paper filed with the Clerk of the Supreme Court shall be taken from the court room or clerk's office except by permission of the court or one of the judges, and when so taken a receipt in writing therefor must be left with the clerk. Permission to take papers will not be granted except to a party, or his attorney, who shall have entered an appearance in the Supreme Court in the cause in which such paper is filed.

**§7338o. Motions—How Made and Heard—Rule XVIII.** 1. Motions to strike out any portion of the transcript, the statement of facts, or to dismiss or affirm upon the record, and all technical motions tending to prevent the hearing of a cause upon its merits, may be made in writing and noticed for some Friday of the session, or the last Friday of any month of the year excepting the months of July and August, or the same may be made and plainly stated in the respondent's brief and heard at the time the cause is assigned upon the calendar.

2. All other motions in appealed causes must be made in writing, and noticed for some Friday of the session or for the last Friday of any month excepting the months of July and August at the opening of court on that day. The motions referred to in this and the first clause of the preceding paragraph will be known as noticed motions.

3. At least two days before the day set for the hearing of such a motion, the motion and notice, with proof of service thereof, must be filed with the clerk. The clerk will prepare a calendar of noticed motions for each Friday, in the order of their filing, and they will be given precedence of other hearings on that day.

4. The Fridays of the weeks during the regular hearing of cases and the last Friday in each month excepting the months of July and August, are hereby designated as motion days.

5. The moving party shall file with the clerk at or before the hearing of any motion twelve copies of a printed or typewritten list of the authorities relied upon to sustain the motion, and the opposing party shall at or before the hearing file a like number of copies of a printed or typewritten list of authorities relied upon to oppose the motion.

**Notices of Motions—Rule XIX.** 1. All notices of motions not given in the briefs must be in writing; and the necessary time of notice shall be not less than ten days, unless a different time is fixed by statute or the special order of this court. But where the service of a notice is made by mail between different places, the time of notice above mentioned shall be thirteen days.

2. Service of papers must in all cases be made upon the attorney of

record of a party, if he have one, unless the place of business or residence of such attorney is unknown, when it may be made upon the party.

**§7338p. Service of Papers—Rule XX.** Service of papers may be made as follows:

1. If upon an attorney, by delivering to him personally, or at his office by delivery to his clerk or to the person having charge thereof; or if his office be not open, or there be no one in charge thereof, at his residence by delivery to some person of suitable age and discretion; or, if neither of the foregoing methods can be followed, by deposit in the post-office to his address, with postage prepaid; Provided, That in capital cases a motion to dismiss an appeal shall be served upon the defendant personally, as well as upon the attorney of record.

2. If upon a party, by delivery to him personally, or at his residence, by delivery to some person of suitable age and discretion, between the hours of 9 o'clock in the forenoon and 9 o'clock in the evening.

**Service—Residence Unknown—Rule XXI.** Where the residence of a party and of his attorney of record, if he have one, is not known, the service may be made upon the Clerk of the Superior Court in which the cause was tried, for the party or attorney.

**Service by Mail—Rule XXII.** 1. Service may be made by mail when the person making the service and the person on whom such service is to be made reside in different places, between which there is regular communication by mail; postage must in such cases be prepaid.

2. Time shall begin to run from the date of deposit in the postoffice.

**§7338r. Habeas Corpus—Rule XXIII.** 1. A Judge of the Supreme Court, when applied to for writs of habeas corpus, may make the same, if granted, returnable before himself or before the Supreme Court, or before any Superior Court of the state, or any judge thereof.

2. Upon such an application, however, the judge applied to may make an order to show cause why the writ should not issue returnable before the Supreme Court.

3. Unless there be special reasons to the contrary, writs of habeas corpus will be issued by the Supreme Court only after a hearing upon an order to show cause.

4. In all cases where the person whose release is sought to be obtained by original habeas corpus from this court is imprisoned in the penitentiary, or in a county jail, upon a charge or conviction of felony, service of the order to show cause and petition must be made upon the superintendent or sheriff, as the case may be, the prosecuting attorney of the county from whence the prisoner was committed, or in which he is confined, and the Attorney General at his office in Olympia.

5. Where the imprisonment is in a county jail upon a charge or conviction of misdemeanor, the service must be upon the prosecuting attorney and sheriff of that county.

**§7338s. Other Original Writs—Rule XXIV.** 1. In all other cases of applications to the Supreme Court for original writs, under either its original or its appellate jurisdiction, the applicant shall show that he has given notice to the opposite party or his attorney of record of his intention to apply for such writ and the time thereof, or furnish satisfactory reasons by affidavit for his failure to give such notice.

2. The notice above required shall not be less than four nor more than fourteen days. Applications under this rule must be made on a regular motion day, unless there be some special emergency requiring earlier action.

3. The opposing party shall be at liberty to make any objections he sees fit upon the face of the papers presented with the application.

4. Upon the final hearing of any application under this rule, each side shall furnish for the use of the court, twelve written or printed copies of their points and authorities.



**ARBITRATION.**

Facts agreed on, case submitted to court §8127.

**§7339. All Differences May Be Arbitrated Except Those Relating to Real Property.** §264.—264. All persons desirous to end, by arbitration, any controversy, suit or quarrel, except such as respect the title to real estate, may submit their difference to the award or umpirage of any person or persons mutually selected.

Objections to arbitration proceedings must be made by exceptions in the proceedings, not by action to annul, *Dickie Mfg. Co. v. Sound Constr. & Eng. Co.* 92 W. 316.

Agreement before dispute to submit to arbitration is irrevocable, *Martin v. Vansant* 99 W. 106.

Dismissing action on agreement to arbitrate dismisses appeals, *Eben v. Houser*, 85 W. 367.

In probate, 409 §365; wrecks at sea, 115 Damage by swine, §2019.

Answer alleging arbitration must show written agreement, award, etc., *Owen v. Casey* 48 W. 673.

Agreement to arbitrate, submission of matter, award and judgment is valid even though an action is instituted by one of the parties prior to notice of submission, *Zindorf Const. Co. v. Western Am. Co.* 27 W. 31.

When an arbitration has failed for any

**§7340. Agreement in Writing—Bond.** §265.—265. Said agreement to arbitrate shall be in writing, signed by the parties, and may be by bond in any sum conditioned that the parties entering into said submission shall abide the award.

"Abide the award" implied in agreement to arbitrate—statute supersedes common law, *Suksdorf v. Suksdorf* 93 W. 667.

Time of award agreed on arbitrators

reason the superior court has jurisdiction to proceed to judgment, *Tacoma Ry. Etc. Co. v. Cummings* 5 W. 206.

Technical defects of award should be disregarded—two arbitrators may make finding, *Bachelor v. Wallace* 1 W. T. 108.

If doubt whether there is ground to arbitrate party may go into court, *Van Horne v. Watrous* 10 W. 525.

Where arbitration condition of contract it is condition precedent to action—approval of award by council is valid, *Lidgerwood Park Water Works Co. v. Spokane* 19 W. 365.

Agreement in insurance policy—contract is superseded by subsequent agreement to arbitrate, *Davis v. Atlas Assurance Co.* 16 W. 232, 241.

Provision in contracts for arbitration is nullified if one party willfully violates contract and property is not in statu quo, *Winsor v. German Savs. & L. Soc.* 31 W. 365.

have no power after time—extension of time—notice of revocation, *Jordan v. Lobe* 34 W. 42.

**§7341. Oath and Award—Filing and Service of Award—Exceptions.** §266. The said arbitrators shall be duly sworn to try and determine the cause referred to them, and a just award make out, under the hands and seals of a majority of them, agreeably to the terms of the submission. Said award, together with the written agreement to submit, shall be sealed up by the arbitrators and delivered to the party in whose favor it shall be made, who shall deliver the same, without breaking the seal, to the clerk of the superior court of the district including the county wherein said arbitration is held who shall enter the same on record in his office. A copy of the award, signed by said arbitrators or a majority of them, shall also be delivered to the party in whose favor it is rendered, who shall, if the matter be not settled, serve a copy of the same on the adverse party, and if no exceptions be filed against the same within twenty days after such service, judgment shall be entered as upon the verdict of a jury, and execution may issue thereon, and the same proceedings upon said award, with like effect as though said award were a verdict in a civil action. L. '91 104.

Power of arbitrators expires at time expressly agreed, *Jordan v. Lobe*, 34 W. 42. full jurisdiction, *Tacoma R. & M. Co. v. Cummings*, 5 W. 206.

When arbitration has failed, court has

**§7342. Appearance of Arbitrators and Parties—Fees and Costs.** §267.—267. The arbitrators chosen under the provisions of this chapter shall each be allowed three dollars per day, to be taxed with other costs of suit; but if either party fail to appear on the day agreed upon for the arbitrators to meet, said party shall be liable for all costs accruing that day, unless his absence was unavoidable, and shall be so established to the satisfaction of said arbitrators. And any arbitrator failing to attend on the day appointed, unless delayed by sickness or unavoidable accident, shall forfeit and pay the sum of five dollars to the school fund of the county, to be recovered by action before a justice of the peace, in the name of the county commissioners of the county.

**§7343. Grounds of Exception to Award. §268.—268.** The party against whom an award may be made, may except in writing thereto for either of the following causes:

1. That the arbitrators or umpire misbehaved themselves in the case.
2. That they committed an error in fact or law.
3. That the award was procured by corruption or other undue means.

Refusal to hear case fully is ground for of an arbitrator discovered during trial, setting award aside, *McDonald v. Lewis* 18 *Glover v. Rochester-German Ins. Co.* 11 W. 300. 143.

Party may repudiate award for prejudice

**§7344. Affirmance or Amendment of Award. §269.** If upon exceptions filed, it shall appear to the said superior court that the arbitrators have committed error in fact or law, the court may refer the cause back to said arbitrators, directing the amendment of said award forthwith, returnable to said court, and on the failure so to correct said proceedings, the court shall be possessed of the case and proceed to its determination. L. '91 104.

Upon failure of arbitration the superior back or confirm the award, *School District court may determine case, Tacoma Ry. Etc. v. Sage*, 13 W. 352. Co. v. Cummings, 5 W. 206.

Award will not be set aside on a point of law if it is a doubtful one, id. The only power the court has upon the hearing of exceptions is to refer the cause

**§7345. Powers of Arbitrators. §270.—270.** Arbitrators, or a majority of them, shall have power:

1. To compel the attendance of witnesses duly notified by either party, and to enforce from either party the production of all such books, papers and documents as they may deem material to the cause.

2. To administer oaths or affirmations to witnesses.

3. To adjourn their meetings from day to day, or for a longer time, and also from place to place if they think proper.

4. To decide both the law and the fact that may be involved in the cause submitted to them.

There being no provision made for the preservation of evidence errors must appear on the face of the award to be considered, *School District v. Sage*, 13 W. 352.

Award fairly and honestly made is binding, id. Final award cannot be reviewed by court without showing misconduct, *Skagit County v. Trowbridge*, 25 W. 140.

Arbitrators are not bound by the strict

**§7346. Evidence Obtained as in Civil Cases. §271.—271.** The laws in force in this state relating to evidence and the manner of procuring the attendance of witnesses, shall govern in arbitrations.

Witnesses and evidence, §7721.

**§7347. Contempt as Before Justices of the Peace. §272.—272.** The law governing proceedings for contempt, in the trial of cases before justices of the peace, so far as the same may be applicable, shall apply to the proceedings before arbitrators.

**§7348. Award of Costs—Judgment—Execution. §273.—273.** The costs of witnesses, and other fees in the case, shall be taxed against the losing party; said fees shall be indorsed upon the award, and when said award is affirmed as the judgment of the superior court, execution shall issue thereon as for costs in civil actions.

Exceptions to instructions must be taken before jury returns verdict, *Weber v. Snohomish Shingle Co.* 37 W. 576.

**§7349. Award Affirmed Is Judgment of Court—Lien. §274.—274.** Such award, when so affirmed, shall be in all respects like any other judgment of the superior court, and a transcript of such judgment, or execution issued thereon, recorded in the county auditor's office in the same manner as other judgments shall be a lien upon real estate in said county.

Judgments upon an award are subject to lien, §8111.

review and attack in the same manner as are other judgments, *McElroy v. Hooper*, 70 W. 347. Award is final in absence of showing to impeach it, *Skagit County v. Trowbridge* 25 W. 140.

Judgments recorded in clerk's office are



## ARREST AND BAIL.

Appeal, bail on §7331.

Arrest and bail in criminal actions §9174.

Bonds by surety companies §§493, 3120, 4542.

Executions, supplementary proceedings, arrest of debtor §7927.

Ne exeat, commitment on §8218.

## CHAPTER 9.

## OF ARREST AND BAIL.

§7350. **Arrest Only On Order of Superior Court or Supreme Judge.**  
 §115.—115. No person shall be arrested or held to bail in any civil action, except upon the order of the court where the action is brought, or a judge of the supreme court.

Constitution prohibits imprisonment for debt, Const., Art. 1, §17; excessive bail, Const., Art. 1, §14.

Constitution providing no imprisonment for debt abates arrest under this statute, *Hamilton v. Pacific Drug Co.* 78 W. 689.

Officer executing warrant may take bail §§7369, 9182.

The foregoing and following sections are inoperative, *Burrichter v. Cline* 3 W. 135.

Arrest and bail in justices' courts, §9410.

§7351. **Grounds of Arrest.** §116.—116. The defendant may be arrested in the following cases:

1. In an action for the recovery of damages, on a cause of action not arising out of contract, where the defendant is a non-resident of the state, or is about to remove therefrom, or where the action is for an injury to person or character, or for injuring, or for wrongfully taking, detaining, or converting property.

2. In an action for a fine or penalty, or on a promise to marry, or for money received, or property embezzled, or fraudulently misapplied, or converted to his own use, by a public officer, or by an attorney, or by an officer or agent of a corporation in the course of his employment as such, or by any factor, agent, broker, or other person in a fiduciary capacity, or for any misconduct or neglect in office, or in a professional employment.

3. In an action to recover the possession of personal property unjustly detained, when the property, or any part thereof, has been concealed, removed, or disposed of, so that it cannot be found or taken by the sheriff, and with intent that it should not be so found or taken, or with the intent to deprive the plaintiff of the benefit thereof.

4. When the defendant has been guilty of a fraud in contracting the debt, or incurring the obligation for which the action is brought, or in concealing or disposing of the property, for the taking, detention, or conversion of which, the action is brought.

5. When the defendant has removed or disposed of his property, or is about to do so, with intent to defraud his creditors.

6. When the action is to prevent threatened injury to, or destruction of property, in which the party bringing the action has some right, interest, or title, which will be impaired or destroyed by such injury or destruction, and the danger is imminent that such property will be destroyed, or its value impaired, to the injury of the plaintiff.

7. On the final judgment or order of any court in this state, while the same remains in force, when the defendant, having no property subject to execution, or not sufficient to satisfy such judgment, has money which he ought to apply in payment upon such judgment, which he refuses to apply, with intent to defraud the plaintiff, or when he refuses to comply with a legal order of the court, with intent to defraud the plaintiff; or, when any one or more of the causes exist for which an arrest is allowed, in the first class of cases mentioned in this section.

Tort is debt, statute authorizing arrest for *v. Seattle Brg. Co.*, 48 W. 560.

tort-seduction violates Const., Art. 1, §17, *Bronson v. Syverson* 88 W. 264.

Recovery may be had against officer where seizure not on execution or attachment against property or plaintiff, *Scott v. McGraw*, 3 W. 675.

Habeas corpus to admit defendant to bail, *State ex rel. Syverson v. Foster* 84 W. 58.

"Injunction" and "restraining order" in this chapter synonymous, *State v. Lichtenberg*, 4 W. 407.

For rulings on this section, see *Cline v. Harmon*, 2 W. 155; *Burrichter v. Cline*, 3 W. 135.

Act constitutional, *Karasek v. Peier*, 22 W. 419.

Where a tender of money necessary, see *Andrews v. Hoeslich*, 47 W. 220; *The*

**§7352. Proof Required and Filing Thereof.** §117. The court or judge making the order of arrest, shall first be satisfied by the affidavit of the party, or his agent, or attorney, and other proof, under oath, exclusive of the complaint, that the case is one in which an arrest is provided for in section, 116 [§7973] and that one or more of the prescribed causes exist, which proof shall be in writing, and, together with the order, be filed with the clerk, before he shall issue any warrant for the arrest. L. '88 31.

**§7353. Court Shall Fix Bail and it Shall Be Indorsed.** §118.—118. The court or judge making the order shall, in all cases, specify therein the amount in which the defendant shall be held to bail, which shall, in no case, exceed the demand of the plaintiff, and one hundred dollars in addition thereto, which amount the clerk shall endorse upon the writ, and the court shall also, in the order, fix the amount of the bond to be given by the plaintiff, as provided in the next succeeding section, which amount shall in no case be less than one hundred dollars.

**§7354. Order and Bond to Be Filed Before Writ Shall Issue.** §119.—119. Before any clerk shall issue a warrant for the arrest of the defendant, he shall require the plaintiff to place on file in his office, a copy of the order granting the warrant, unless the same was made in open court and appears in the minutes; the original affidavit and proofs, upon which the order was made, and a bond on behalf of the plaintiff, in such an amount as the court or judge may have fixed in the order, with sureties to the satisfaction of the clerk, conditioned to pay to the defendant all damages which he shall suffer, and all expenses he shall incur by reason of such arrest or imprisonment, if the order shall be vacated in the manner provided for in the next succeeding section, or if the plaintiff fail to recover in his action.

**§7355. Defendant May Vacate Order—Procedure.** §120.—120. The defendant may, on motion, apply to the court to vacate the order of arrest, on the ground of insufficiency of the proof, or he may show that the facts alleged, upon which the order issued, are untrue, or he may apply to have the amount of bail reduced. If the court, upon any such motion, shall vacate the order, the defendant shall be discharged from the arrest, and any bond he may have given shall be canceled, but the action, unless dismissed for other cause, shall be conducted in the same manner as in cases where complaint and notice were duly served and filed.

**§7356. Complaint Shall Be Filed Before Writ Shall Issue.** §121.—121. When an order of arrest is granted prior to the filing of the complaint, the warrant shall not issue until the complaint is filed with the clerk, and a copy of said complaint shall be served on the defendant with the warrant; but an order of arrest may be granted at any time after the action is commenced and before judgment is satisfied, when the party seeking the order shall comply with the preceding provisions in regard to arrests.

**§7357. Sheriff Shall Execute Writ and Serve By Copy.** §122.—122. The warrant must be delivered to the sheriff, who, upon arresting the defendant, must deliver to him a copy thereof.

**§7358. Arrest of Defendant—Costs to Be Advanced By Plaintiff or Defendant Discharged.** §123.—123. The sheriff shall execute the warrant by arresting the defendant, and keeping him in custody until discharged by law. And the plaintiff, in the first instance, shall be liable for the sheriff's fees, for the food and maintenance of any person, under arrest, which, if required by the sheriff, shall be paid weekly in advance. And such fees, so paid, shall be added to the costs taxed or accruing in the case, and be collected as other costs. And if the plaintiff shall neglect to pay such fees, for three days after a demand, in writing, upon the plaintiff or his attorney, for payment, the sheriff may discharge defendant out of custody.



**§7359. Defendant May Give Bail—Conditions of Bond.** §124.—124. The defendant may give bail by causing a bond to be executed by two or more sufficient sureties, stating their places of residence and occupations, conditioned that the defendant shall at all times render himself amenable to the process of the court during the pendency of the action, and to such as may be issued to enforce the judgment rendered therein; or, if he be arrested for the cause mentioned in the third subdivision of section one hundred and sixteen it shall be further conditioned that the specific article of property, or instrument of writing which is the subject matter of the writ, shall be forthcoming, to abide any order which shall be made therein; or, if he be arrested for the cause mentioned in the sixth subdivision of said section it shall be further conditioned that he will not commit the injury or destruction alleged to be threatened in the affidavit or proofs on which the arrest is ordered.

**§7360. Contents of Warrant of Arrest.** §125.—125. The warrant shall, in all cases, contain a short statement of the alleged causes for which the order was granted, and also the amount for which bail is required.

**§7361. Sureties May Surrender Principal—Procedure.** §126.—126. At any time before a failure to comply with their bonds, the bail may surrender the defendant in their exoneration, or he may surrender himself to the sheriff of the county where he was arrested, in the following manner:

1. A certified copy of the bail bond shall be delivered to the sheriff, who shall retain the defendant in his custody thereon as upon an order of arrest, and by a certificate in writing, acknowledge the surrender.

2. Upon the production of a copy of the bail bond and sheriff's certificate, a judge of the superior court may, upon a notice to the plaintiff of eight days, with a copy of the certificate, order that the bail be exonerated, and on filing the order and the papers used on such application, they shall be exonerated accordingly. But this section does not apply to an arrest for the cause mentioned in the sixth subdivision of section one hundred and sixteen.

**§7362. Sureties May Arrest Principal.** §127.—127. For the purpose of surrendering the defendant, the bail, at any time or place before they are finally discharged, may themselves arrest him, or, by written authority, indorsed upon a certified copy of the bond, may empower any person of suitable age and discretion to do so.

**§7363. Recovery Against Sureties Only By Action.** §128.—128. In case of failure to comply with the condition of the bond, the bail can be proceeded against by action only.

**§7364. Exoneration of Sureties.** §129.—129. The bail may be exonerated, either by the death of the defendant, or his imprisonment in the penitentiary, or by his legal discharge from the obligation to render himself amenable to the process, or by his surrender to the sheriff of the county where he was arrested, in exoneration thereof, within twenty days after commencement of the action against the bail, or within such further time as may be granted by the court.

**§7365. Return of Writ—Justification of Sureties.** §130.—130. Within the time limited for that purpose, the sheriff must deliver the order of arrest to the clerk, with his return endorsed thereon, and the bond of the bail, or a copy thereof. The plaintiff, within ten days thereafter, may serve upon the sheriff a notice that he does not accept the bail, or he must be deemed to have accepted it, and the sheriff shall be exonerated from liability.

**§7366. Notice of Justification to Plaintiff.** §131.—131. On the receipt of notice, the sheriff or defendant may, within ten days thereafter, give to the plaintiff or his attorney notice of the justification of the same, or their bail, (specifying the places of residence and occupations of the latter), before judgment of the court or justice of the peace, at a specified time and place, the time to be not less than five days nor more than ten thereafter. In case other bail be given, there must be a new bond in the form prescribed in section one hundred and twenty-four.

Court or officer taking bond may qualify surety, §7369; officer executing warrant may take bail, §9182. Bond shall not fail, §7431.

**§7367. Qualification of Sureties.** §132.—132. The qualifications of the bail shall be as follows:

1. Each of them shall be a resident of the state; but no counsellor or attorney at law, sheriff, clerk of the superior court, or other officer of such court, shall be permitted to become bail in any action.

2. Each of the bail shall be worth the amount specified in the order of arrest, or the amount to which the order may be reduced, as provided in this chapter, over and above all debts and liabilities, and exclusive of property exempt from execution; but the judge or justice, on justification, may allow more than two sureties to justify, severally, in amounts less than that expressed in the order, if the whole justification be equivalent to that of two sufficient bail.

Residence in the county is not required until objection is made, *Brooks v. James* of surety on cost bond—surety not re- 16 W. 335.  
quired to justify as to separate property

**§7368. Manner of Justification.** §133.—133. For the purpose of justification, each of the bail must attend before the judge or justice of the peace at the time and place mentioned in the notice, and may be examined on oath on the part of the plaintiff touching his sufficiency, in such manner as the judge or justice of the peace, in his discretion, may think proper. The examination must be reduced to writing and subscribed by the bail, if required by the plaintiff.

**§7369. Officer Taking Bail May Examine Sureties.** §748.—748. Every court and officer authorized to take any bail or surety shall have power to examine on oath the person offering to become such bail or surety, concerning his property and sufficiency as such bail or surety.

**§7370. Approval of Bond.** §134.—134. If the judge or justice find the bail sufficient, he shall endorse his allowance thereof on the bond and cause it to be filed with the clerk, and the sheriff shall thereupon be exonerated from liability.

**§7371. Money Bail.** §135.—135. The defendant may at the time of his arrest, instead of giving bail, deposit with the sheriff the amount mentioned in the order. The sheriff must thereupon give the defendant a certificate of deposit, and the defendant shall be discharged from custody.

**§7372. Money Bail.** §750.—750. Any person required to give bail, may deposit with the clerk the amount of money for which he is required to give bail and thereupon be discharged from arrest.

**§7373. Money to Be Deposited.—Certificate to Plaintiff.** §136.—136. The sheriff shall within ten days after the deposit, pay the same into court, and take from the officer receiving the same two certificates of such payment, the one of which he must deliver to the plaintiff and the other to the defendant. For any default in making such payment, the same proceeding may be had on the official bond of the sheriff to collect the sum deposited, as in cases of delinquency.

**§7374. Bond May Be Substituted for Money Bail.** §137.—137. If the money be deposited, as provided in the last two sections, bail may be given and justified, upon notice as hereinbefore provided, at any time before judgment; and thereupon the judge before whom justification is had, shall direct in the order of allowance that the money deposited be refunded by the sheriff or clerk to the defendant, and it shall be refunded accordingly.

**§7375. Bail Money May Be Applied on Judgment.** §138.—138. When money shall have been so deposited, if it remain on deposit at the time of an order or judgment for the payment of money to the plaintiff, the clerk shall, under the direction of the court, apply the same in the satisfaction thereof, and, after satisfying judgment, refund the surplus, if any, to the defendant. If the judgment be in favor of the defendant, the clerk shall refund to him the whole sum deposited and remaining unapplied.

**§7376. Sheriff Liable for Escape.** §139.—139. If, after being arrested, the defendant escapes or be rescued, the sheriff himself shall be liable as bail; but he may discharge himself from such liability, by giving bail at any time before judgment.



**§7377. Collection of Judgment Against Sheriff as Bail.** §140.—140. If the judgment be recovered against the sheriff upon his liability as bail, and an execution thereon be returned unsatisfied, the same proceedings may be had on the official bond of the sheriff to collect the deficiency, as in other cases of delinquency.

**§7378. Liability of Sureties to Sheriff if They do not Justify.** §141.—141. The bail taken on arrest shall, unless they justify, or other bail be given or justified, be liable to the sheriff, by action, for the damages which he may sustain by reason of such omission.

## ATTACHMENT.

Animal cruelly confined—sale §1968.

Boat mooring for trade §492.

Bill of lading issued, writ will not lie §451.

Registered land, how attached §5799.

## ATTACHMENT.

Substitute—**AN ACT** in relation to attachments and garnishments. Approved February 3, 1886. Repeal, of C81 ch 12, §§1726-45, Laws '83 p 42 and general repeal. Laws '85-6 p 39.

**§7379. Attachment at Any Time.** §1. The plaintiff at the time of commencing an action, or at any time afterward before judgment, may have the property of the defendant, or that of any one or more of several defendants attached in the manner hereinafter prescribed as security for the satisfaction of such judgment as he may recover.

Attachment of peddling boats, §492.

No exemption if debtor has left or is about to leave the state, §7858.

Levy on interest of tenant in common of realty, §7836; of joint owner of personalty, §§7836, 7837.

Claim for labor, priority of, §9736.

Personal property not affected by writs or judgment until levied upon, §§8121, 7893.

Receivership in proceedings supplementary holds both real and personal property by filing order, §7958.

Claim by third person, §7843; in justice's court, §9623.

Attachment inferior to title by sight draft with bill of lading, Commercial Bank v. Elliott 92 W. 357.

Wife need not be named in attaching community, Godefroy v. Hupp 93 W. 371.

Wrongful measure of damages for taking tools, stock, etc., paper hanging business—judgment conclusive—evidence—reasonable cause—attorney fee, McGill v. Fuller & Co. 45 W. 615.

Indexed in name of husband is not notice to bona fide purchaser of community property in name of wife, Anders v. Bouska 61 W. 393.

Attaching creditor takes only interest of debtor, Lee v. Wrixon 37 W. 47.

Act providing for commencement of action by service of summons did not repeal attachment Cosh-Murray Co. v. Tuttle 10 W. 449.

Attachment may be had in equitable action.

**§7380. Grounds of Affidavit for.** §2. The writ of attachment shall be issued by the clerk of the court in which the action is pending; but before any such writ of attachment shall issue, the plaintiff, or some one in his behalf, shall make and file with such clerk an affidavit, showing that the defendant is indebted to the plaintiff (specifying the amount of such indebtedness over,

tion, Bingham v. Keylor 19 W. 555.

Garnishment provisions are repealed, Wooding, v. Puget Sound Nat. Bank 11 W. 527.

Goods in mortgagee's possession under absolute bill of sale are not liable to attachment against mortgagee, Voorhees v. Hennessy 7 W. 243.

Confession of judgment is not waiver of attachment lien, Schloss v. State Bank 4 W. 726.

Sale by action defeats subsequent attachments, Dixon v. Barnett 3 W. 645.

Attachment lien will support creditor's bill with showing of insolvency, Benham v. Ham 5 W. 128.

Attachment may issue after filing complaint and before service of summons, Schwabacher Bros. & Co. v. Abrahams Gro. Co. 14 W. 225.

Attachment after injunction against sale and transfer of property of insolvent corporation to receiver will not give priority, State ex rel. Schwabacher Bros. & Co. v. Superior Court 11 W. 63.

May be had in equitable action to recover a specified amount of money, Rorer v. Snyder 29 W. 199.

A foreign creditor cannot attach realty of foreign debtor in this State after such debtor has made an assignment, Bloomington v. Well 29 W. 611.

Is auxiliary proceeding, Nesqually Mill Co. v. Taylor 1 W. T. 1.

Cited 86 W. 300.

and above all just credits and offsets), and that the attachment is not sought, and the action is not prosecuted to hinder, delay or defraud any creditor of the defendant; and either.

1. That the defendant is a foreign corporation; or
2. That the defendant is not a resident of this state; or
3. That the defendant conceals himself so that the ordinary process of law cannot be served upon him; or
4. That the defendant has absconded or absented himself from his usual place of abode in this state, so that the ordinary process of law cannot be served upon him; or
5. That the defendant has removed or is about to remove any of his property from this state with intent to delay or defraud his creditors or
6. That the defendant has assigned, secreted or disposed of, or is about to assign, secrete or dispose of any of his property with intent to delay or defraud his creditors; or
7. That the defendant is about to convert his property, or a part thereof into money for the purpose of placing it beyond the reach of his creditors; or
8. That the defendant has been guilty of a fraud in contracting the debt or incurring the obligation for which the action is brought or
9. That the damages for which the action is brought are for injuries arising from the commission of some felony, or for the seduction of any female.

Amendments. §7409.

Preference of creditor or refusal to incur further indebtedness is not ground for attachment, *Nettleton v. Howe* 81 W. 32.

Insolvency is not ground for attachment, *Wild Rose Orchard Co. v. Critzer* 79 W. 462.

Attachment for unliquidated claim against non-resident sustained, *State ex rel. Getzelman v. Superior Court* 93 W. 98.

Burden of proof on attaching party—attaching affidavit stated facts, not grounds and attachment dissolved, *Nettleton v. Howe* 81 W. 32.

Attachment against corporation will not hold property of co-partnership of same name, *Yarbrough v. Pugh* 63 W. 140.

Will not lie to aid foreclosure of mortgage, *Advance Thresher Co. v. Schimke* 47 W. 162.

Writ will not lie in action for taking or cutting timber, *Tacoma Mill Co. v. Perry* 32 W. 650.

An attachment lies for a debt fraudulently contracted—affidavit that the de-

fendant "has assigned" and that he "is about to assign" is not inconsistent—a state of facts held to be sufficient to warrant attachment, *Blackington v. Rumpf* 12 W. 279.

Supplemental affidavit should be stricken if it is not filed until after appeal is taken—attachment may issue in cases of embezzlement or larceny by embezzlement, *Brandenstein v. Way*, 17 W. 293.

Where a motion is made to discharge an attachment plaintiff must establish his allegation by fair preponderance of the evidence, *Bender v. Rinker* 21 W. 633.

Will not lie between partners because one fails to charge himself with debts collected due the firm, *Bingham v. Keylor* 19 W. 555.

If affidavit not sworn to proceeding is void, *Tacoma Grocery Co. v. Draham* 8 W. 263.

Attempt at preference of creditors by insolvent corporation is not ground of attachment, *Holbrook v. Ritters Etc.* 8 W. 344.

**§7381. Attachment Before Claim Is Due.** §3. An action may be commenced and the property of a debtor may be attached previous to the time when the debt becomes due, when nothing but time is wanting to fix an absolute indebtedness, and when the affidavit in addition to that fact, states:

1. That the defendant is about to dispose of his property with intent to defraud his creditors; or
2. That the defendant is about to remove from the state and refuses to make any arrangements for securing the payment of the debt when it falls due, and which contemplated removal was not known to the plaintiff at the time the debt was contracted; or
3. That the defendant has disposed of his property in whole or in part with intent to defraud his creditors; or
4. That the debt was incurred for property obtained under false pretences.

Complaint on immature debt and for attachment must show reason for premature action—interlocutory appeal cannot try amendable complaint, *Johnson v. Muenz* 76 W. 526.

Showing of fraud necessary—amendment of complaint, *Carstens v. Milo* 40 W. 335.

Fraudulent disposition must be alleged and proven, *Cox v. Dawson* 2 W. 381.



After the dissolution of an attachment on debt not yet due no judgment can be had on the debt though it is due at the time judgment is sought—order dissolving attachment is appealable when it amounts to a final judgment, *Augir v. Foresman* 23

W. 595.

Bond is condition precedent to issuance, *Wentworth v. Moore* 64 W. 451.

Failure to condition bond for payment of "all costs" is amendable and not jurisdictional defect, *Roznik v. Becker* 68 W. 63.

**§7382. Defendant Not Required to Plead Until Claim Is Due.** §4. If the debt or demand for which the attachment is sued out is not due at the time of the commencement of the action, the defendant is not required to file any pleadings until the maturity of such debt or demand, but he may, in his discretion, do so, and go to trial as early as the cause is reached.

**§7383. No Judgment Until Claim Is Due—Sale of Property.** §5. No final judgment shall be rendered in such action, unless the party consents as in the last section, until the debt or demand upon which it is based becomes due. But property of a perishable nature may be sold as in other cases of attachment.

**§7384. Bond—Without Bond—Liability on Bond.** §6. Before the writ of attachment shall issue the plaintiff, or some one in his behalf, shall execute and file with the clerk a bond or undertaking, with two or more sureties, in the sum in no case less than three hundred dollars, in the Superior Court, nor less than fifty dollars in a justice court, and double the amount for which plaintiff demands judgment, conditional that the plaintiff will prosecute his action without delay and will pay all costs that may be adjudged to the defendant, and all damages which he may sustain by reason of the attachment, not exceeding the amount specified in such bond or undertaking, as the penalty thereof, should the same be wrongfully, oppressively or maliciously sued out. With said bond or undertaking there shall also be filed the affidavit of the sureties, from which it must appear that such sureties are qualified and that they are, taken together, worth the sum specified in the bond or undertaking, over and above all debts and liabilities, and property exempt from execution. No person not qualified to become bail upon arrest shall be qualified to become surety upon a bond or undertaking for an attachment: Provided, That when it is desired to attach real estate only, and such fact is stated in the affidavit for attachment and the ground of attachment is that the defendant is a foreign corporation, or is not a resident of the state, or conceals himself so that the ordinary process of law cannot be served upon him, or has absconded or absented himself from his usual place of abode, so that the ordinary process of law cannot be served upon him, the writ of attachment shall issue without bond or undertaking by or on behalf of the plaintiff: And Provided further: That when the claim, debt or obligation, whether in contract or tort, upon which plaintiff's cause of action is based, shall have been assigned to him, and his immediate or any other assignor thereof retains or has any interest therein, then the plaintiff and every assignor of said claim, debt or obligation who retains or has any interest therein, shall be jointly and severally liable to the defendant for all costs that may be adjudged to him and for all damages which he may sustain by reason of the attachment, should the same be wrongfully, oppressively or maliciously sued out. L. '03 47.

Counter bond, §7403.

Justification of sureties in arrest and bail, §7366.

Necessary allegations in action on bond, *Church v. Campbell* 7 W. 547.

Measure of damages in action on bond for goods under contract is price agreed on and not market value, *Curry v. Catlin* 12 W. 322.

An action on an attachment bond in which the principal was a non-resident. Questions raised as to notice by sureties to sue principal—allegation of signing by sureties when copy of bond sets out their names—sureties liable for damages without demand on principal—sureties on bond of corporation esopped from denying corporate liability, reasonable cause for at-

tachment as a defense for sureties—plaintiff may show want of reasonable cause for levy—malice of agent is chargeable to principal—injury to commercial credit is not an element of damages, *Seattle Crockery Co. v. Haley et al*, 6 W. 302.

In an action on an attachment bond, held: that the costs of the principal action cannot be recovered; that damages for detention of property must be actual; no actual damage shown exemplary damages cannot be recovered on malicious attachment; failure of plaintiff to prove principal case is not evidence of malice, *Hilfrich v. Meyer* 11 W. 186.

Sureties not liable for wrongs prior to levy unless they are a party, *Dawson v. Baum* 3 W. T. 464.

Failure to justify does not defeat bond. *Baxter v. Smith* 2 W. T. 97.

**§7385. Additional Bond or Attachment Vacated. §7.** The defendant may at any time before judgment move the court or judge for additional security on the part of the plaintiff, and if on such motion the court or judge is satisfied that the surety in the plaintiff's bond has removed from this state or is not sufficient the attachment may be vacated and restitution directed of any property taken under it unless in a reasonable time, to be fixed by the court or judge, further security is given by the plaintiff, in form as provided in section six of this act.

**§7386. Recovery on Bond—Exemplary Damages and Attorneys' Fees. §8.** In an action on such bond the plaintiff therein may recover, if he shows that the attachment was wrongfully sued out, and that there was no reasonable cause to believe the ground upon which the same was issued to be true, the actual damages sustained and reasonable attorney's fees to be fixed by the court; and if it be shown that such attachment was sued out maliciously, he may recover exemplary damages, nor need he wait until the principal suit is determined before suing on the bond.

Judgment against sureties on counter bond, §7404

Advice of counsel no defense—cause for attachment is question for court—actual loss not excessive damages, *Wild Rose Orchard Co. v. Critzer* 79 W. 462.

All damages of whatever nature may be recovered in action on bond—probable cause on advice of attorney is question of fact, *Voss v. Bender* 32 W. 566.

"Exemplary damages" defined—attorney's advice as reasonable cause—no actual damage shown no exemplary damages recoverable, *Levy v. Fleischner, Mayer & Co.* 12 W. 15; *Hilfrick v. Meyer* 11 W. 186.

Damages may be recovered in one suit for injury to joint and individual property—exemplary damages recoverable—belief of defendant and attorney's advice as a defense—dissolution prima facie evidence of rightful dissolution, *Sloane v. Langert* 6 W. 26.

Action on an attachment bond is prema-

**§7387. Writ to Sheriff—Levy and Costs. §9.** The writ of attachment shall be directed to the sheriff of any county in which property of the defendant may be, and shall require him to attach and safely keep the property of such defendant within his county, to the requisite amount which shall be stated in conformity with the affidavit. The sheriff shall, in all cases attach the amount of property directed if sufficient not exempt from execution, be found in his county giving that in which the defendant has a legal and unquestionable title, a preference over that in which his title is doubtful or only equitable and he shall as nearly as the circumstances of the case will permit levy upon property fifty per cent. greater in value than the amount which plaintiff in his affidavit claims to be due. When property is seized on attachment the court may allow to the officer having charge thereof, such compensation for his trouble and expenses in keeping the same as shall be reasonable and just.

Exemptions, §7848.

Title to property at attachment sale passes though levy was excessive and the debtor made a sale after levy and before attachment sale, *McConnell v. Kaufman* 5 W. 686.

Seizure under attachment does not divest title, *Dixon v. Barnett* 3 W. 645.

**Property Attachable:** Exempt property of absconding debtor, *Carter v. Davis*, 6 W. 327; mortgagor's interest, *Marsh v. Wade*, 1 W. 538; but not homestead lands acquired subsequent to debt, *Jean v. Dee*, 5 W. 580; *Hunter v. Wenatchee Land Co.*, 36 W. 541; nor property in hands of an assignee for benefit of creditors, *H.*

ture when appeal is pending with attachment as an interlocutory order therein—attorney's fee, *Maxwell v. Griffith* 20 W. 106.

Sureties on official bond liable for wrongful attachment, *Mace v. Gaddis*, 3 W. T. 125.

Allegation that defendants gave bond, not executed one, insufficient, *Church v. Campbell*, 7 W. 547.

Wrongfulness of attachment not sufficient—must be proof of lack of reasonable cause, *McGill v. Fuller & Co.*, 45 W. 615.

Injury to business credit not element of damages, *Slauson v. Schwabacher*, 4 W. 783.

Where sale of goods negotiated before attachment, measure of damages is contract, not market price, *Curry v. Catlin*, 12 W. 323.

Action on bond, §7386.

*Shoe Co. v. Adams*, 5 W. 333; nor assets of insolvent corporation, *Compton v. Schwabacher Bros.*, 15 W. 306; State ex rel. *Krisch v. Sup. Ct.*, 36 W. 91; nor mortgaged chattels held by debtor as mortgagee under bill of sale absolute in form, *Voorhies v. Hennessy*, 7 W. 243; nor where chattels mortgaged before attachment but mortgage filed afterward, *First Nat. Bank v. Carter*, 6 W. 494.

Receiver takes no title to property held under attachment where leinors not parties to action in which he was appointed, *State v. Sup. Ct.*, 8 W. 210. See *State v. Sup. Ct.*, 11 W. 63.



**§7388. Writs to Different Counties and Alias Writs. §10.** Writs of attachment may be issued from the superior court to different counties and several may at the option of the plaintiff, be issued at the same time, or in succession and subsequently until sufficient property has been attached; but only those executed shall be taxed in the costs, unless otherwise ordered by the court, and if more property is attached in the aggregate than the plaintiff is entitled to have held, the surplus must be abandoned and the plaintiff pay all costs incurred in relation to such surplus. After the first writ shall have issued, it shall not be necessary for the plaintiff to file any further affidavit or bond, but he shall be entitled to as many writs as may be necessary to secure the amount claimed.

**§7389. Order of Levy of Several Writs. §11.** Where there are several attachments against the same defendant, they shall be executed in the order in which they were received by the sheriff.

Writs must be levied in order received— sheriff liable—measure of damages, Continental Distrib. Co. v. Hays 86 W. 300. uty's hands subsequent to execution in the hands of the sheriff gives attachment priority over execution. Wallace & Sons, Etc. v. Sharick 15 W. 643.

Prior levy of attachment placed in dep-

**§7390. Sheriff May Pursue Property Into Another County. §12.** If after an attachment has been placed in the hands of the sheriff, any property of the defendant is moved from the county, the sheriff may pursue and attach the same in an adjoining county within twenty-four hours after removal.

**§7391. Manner of Levy. §13.** The sheriff to whom the writ is directed and delivered must execute the same without delay as follows:

1. Real property shall be attached by filing a copy of the writ, together with a description of the property attached, with the county auditor of the county in which the attached real estate is situated.

2. Personal property, capable of manual delivery, shall be attached by taking into custody.

3. Stock or shares, or interest in stock or shares, of any corporation, association or company, shall be attached by leaving with the president or other head of the same, or the secretary, cashier or managing agent thereof, a copy of the writ, and a notice stating that the stock or interest of the defendant is attached in pursuance of such writ.

4. Debts and credits and other personal property, not capable of manual delivery, shall be attached by leaving with the person owing such debts, or having in his possession or under his control such credits or other personal property, a copy of the writ and a notice in writing that the debts owing by him to the defendant, or the credits and other personal property in his possession or under his control, are attached in pursuance of such writ.

Garnishment superseded, §7999.

Execution levy, §7893.

Levy on fund in court, §7999.

Claim to property, §7843.

Breaking building for replevin, §8428.

Posting notices of sale is not levy on growing crop, Cupples v. Level 54 W. 299.

Attachment is not constructive notice to subsequent party acquiring from grantee of attachment debtor, Johnson v. Irvin 16 W. 652.

Attachment against husband will not affect subsequent bona fide purchaser of wife though wife was fraudulent grantee of husband Clerf v. Montgomery 15 W. 483.

Where sheriff, acting under indemnity bond and by plaintiff's direction, is compelled to pay judgment for wrongful levy, title to property remains in sheriff in trust for attachment plaintiff, Barnett v. O'Laughlin, 8 W. 260.

**§7392. Defendant Required to Make Discovery of Property. §14.** Whenever it appears by the affidavit of the plaintiff or by the return of the attachment that no property is known to the plaintiff or officer on which the attachment can be executed, or not enough to satisfy the plaintiff's claim, and it being shown to the court or judge by affidavit that the defendant has property within the state not exempt, the defendant may be required by such court or judge to attend before the court or judge or referee appointed by the court or judge and give information on oath respecting the same.

**§7393. Receiver May Be Appointed. §15.** The court before whom the action is pending or the judge thereof in vacation may at any time appoint a receiver to take possession of the property attached under the provisions of this act and to collect, manage and control the same and pay over the proceeds according to the nature of the property and the exigency of the case.

Receiver may be appointed for property 14 W. 324.  
attached and may hold the property 14 W. 324.  
against assignee for the benefit of creditors. State ex rel. Baum v. Superior Court 7 W. 77.  
Attaching creditor is entitled to prohibition to protect property attached, State ex rel. Etc. v. Superior Court 7 W. 77.

**§7394. Sales of Property Before Judgment. §16.** If any of the property attached be perishable or in danger of serious and immediate waste or decay, the sheriff shall sell the same in the manner in which such property is sold on execution. Whenever it shall be made to appear satisfactorily to the court or judge that the interest of the parties to the action will be subserved by a sale of any attached property, the court or judge may order such property to be sold in the same manner as like property is sold under execution. Such order shall be made only upon notice to the adverse party or his attorney in case such party shall have been personally served with a summons in the action. Debts and credits attached may be collected by the sheriff, if the same can be done without suit, and the sheriff's receipt shall be a sufficient discharge for the amount paid.

Payment by third party in supplement- Title to goods sold under attachment  
ary proceeding, §7933. levy passes to purchasers at sale McConnell v. Kaufman, 5 W. 686.

Sales under execution, §7893.

Garnishment, §7397.

**§7395. Priority of Attachment and Execution on Judgment Prior to Attachment. §17.** All moneys received by the sheriff under the provisions of this act and all other attached property shall be retained by him to answer any judgment that may be recovered in the action unless sooner subjected to execution upon another judgment recovered previous to the issuing of the attachment.

Priority of attachment and prior judgment, §7399. v. Strong 3 W. T. 61.

Attachment prior to unrecorded chattel mortgage with notice, Baxter v. Smith 2 W. T. 97. Attachment has priority over irregular foreclosure by levy. Id.

Writs in hands of both sheriff and deputy first levied has priority. Meacham Etc. Money must be left intact until judgment, State ex rel. Arthur Mach. Co. v. Sup. Ct., 7 W. 77.

**§7396. Sheriffs, Constables, Executors and Judgment Debtors Liable in Garnishment. §19.** A sheriff or constable may be garnished for money of the defendant in his hands. So may a judgment debtor of the defendant when the judgment has not been previously assigned on the record or by writing filed in the office of the clerk and by him minuted as an assignment in the margin of the execution docket, and also an executor or administrator may be garnished for money due from the decedent to the defendant.

Garnishment prior to assignment of mercantile Inv. Co. 30 W. 272.

judgment filed afterward, Mottet v. Stafford 94 W. 572.

Service of writ on sheriff—liability of receiver in garnishment, Russell v. Millett 20 W. 212.

This section is in force, Pierce v. Com.

**§7397. Attachment of Fund in Court. §20.** When the property to be attached is a fund in court the execution of a writ of attachment shall be by leaving with the clerk of the court a copy thereof, with notice in writing specifying the fund.

Receiver liable in garnishment, Russell v. Millett 20 W. 212.

**§7398. Sheriff's Return. §21.** The sheriff shall make a full inventory of the property attached and return the same with the writ. To enable him to make such return as to debts and credits attached, he shall request at the time of service the party owing the debt or having the credit to give him a memorandum in writing, stating the amount and description of each, and if such memorandum be refused he shall return the fact of the refusal with the writ. The party refusing to give the memorandum may be required to attend before the court or judge or a referee appointed by the court or judge, and answer under oath respecting such debts or credits or other property. If when duly summoned, he fail to appear and answer the interrogatories propounded to him without sufficient excuse for his delinquency, he shall be presumed to be indebted to the defendant to the full amount of the plaintiff's demand. But for a mere failure to appear he is not liable to pay the



amount of plaintiff's judgment until he has had an opportunity to show cause against the issuing of the execution.

**§7399. Application of Attached Property.** §25. If judgment be recovered by the plaintiff, the sheriff shall satisfy the same out of the property attached by him which has not been delivered to the defendant or claimant as in this act provided, or subjected to execution on another judgment recovered previous to the issuing of the attachment, if it be sufficient for that purpose

1. By applying on the execution issued on said judgment the proceeds of all sales of perishable or other property sold by him, or of any debts or credits collected by him, or so much as shall be necessary to satisfy the judgment.

2. If any balance remain due he shall sell under the execution so much of the property, real or personal, as may be necessary to satisfy the balance, if enough for that purpose remain in his hands.

Notice of the sale shall be given and the sales conducted as in other cases of sales on execution.

Prior judgment prior to attachment, §7395.

Dissolution of attachment refused by lower court the Supreme Court will not consider the question since the property will be applied to satisfy the execution. *Turpin v. Whitney* 6 W. 61.

Property is held until it is applied on the judgment and is not affected by issuance of an execution—sureties on indemnifying bond in attachment cannot plead that damage occurred from sale on execution. *Van De Vanter v. Davis* 23 W. 693.

If defendant personally served it is not necessary to disclose attachment action and foreclosure had. *Pennsylvania Mtg. Co. v. Gilbert* 13 W. 684.

Proceeds should be applied when several writs in the order of levy and not pro rata. *Bradley v. Gotzian* 12 W. 71.

Judgment should expressly preserve attachment lien and subject property to execution. *Sheppard v. Guisler*, 10 W. 41.

Lien of attachment of real estate is merged in that of judgment when latter is entered. *Gullickson v. Fenlon*, 48 W. 503.

Sheriff may retain from proceeds necessary charges for caring for property. *Barnett v. O'Laughlin*, 8 W. 260.

Attachment sale valid although no notice to mortgagee. *Byrd v. Forbes*, 3 W. T. 318.

Where claim also filed with debtor's assignee, amount received on attachment sale should be deducted therefrom. *Neufelder v. North British, etc., Co.*, 10 W. 393.

**§7400. Execution Over—Release if Judgment Is Paid.** §26. If after selling all the property attached by him remaining in his hands and applying the proceeds together with the proceeds of any debts or credits collected by him, deducting his fees, to the payment of the judgment, any balance shall remain due, the sheriff shall proceed to collect such balance as upon an execution in other cases. Whenever the judgment shall have been paid the sheriff upon reasonable demand shall deliver over to the defendant the attached property remaining in his hands and any proceeds of the property attached, unapplied on the judgment.

Applies only to such judgments as may be satisfied by a general execution. *Clifford v. Pateros Transfer Co.* 71 W. 665.

**§7401. The Usual Remedies on Execution.** §27. If the execution be returned unsatisfied, in whole or in part, the plaintiff may proceed as in other cases upon the return of an execution.

**§7402. Judgment for Defendant—Procedure.** §28. If the defendant recover judgment against the plaintiff, all the proceeds of sales and money collected by the sheriff, and all the property attached remaining in the sheriff's hands, shall be delivered to the defendant or his agent. The order of attachment shall be discharged and the property released therefrom.

**§7403. Counter Bond—Counter Bond Is Appearance in Action.** §29. If the defendant at any time before judgment cause a bond to be executed to the plaintiff with sufficient sureties, to be approved by the officer having the attachment, or after the return thereof, by the clerk, to the effect that he will perform the judgment of the court, the attachment shall be discharged and restitution made of property taken or proceeds thereof. The execution of such bond shall be deemed an appearance of such defendant to the action.

General and special appearance, §8451. of surety absolute, *Brady v. Onffroy* 37 W.

Redelivery by bond waives action on 482.

bond, *Gutter v. Joiner* 56 W. 202.

Counterbond discharges attachment—or refusal to dissolve will not be considered on appeal, *Kratz v. Dawson* 3 W. T. 100.

der discharging for irregularity—liability

**§7404. Judgment Against Sureties on Counter Bond.** §30. Such bond shall be part of the record, and, if judgment go against the defendant, the same shall be entered against him and sureties.

Judgment against sureties without notice, *Park v. Mighell* 3 W. 737. Judgment against sureties on counter bond, *Rodolph v. Mayer* 1 W. 134.

**§7405. Motion to Discharge.** §31. The defendant may at any time after he has appeared in the action, either before or after the release of the attached property, or before any attachment shall have been actually levied, apply on motion, upon reasonable notice to the plaintiff, to the court in which the action is brought, or to the judge thereof, that the writ of attachment be discharged on the ground that the same was improperly or irregularly issued.

Amendments, §7409.

Exemption not ground of discharge—motion requires general appearance, *Holmes v. Cooper* 48 W. 24.

Refusal to dissolve attachment under the facts sustained, *Gordon v. Gillespie* 58 W. 627.

On motion to dissolve burden is on plaintiff to prove ground—evidence held insufficient, *Nicholson v. Erickson* 56 W. 419; *Watson v. Shelton* id. 426.

Discharge of attachment is in discretion of the court, *Gehres v. Orowski* 36 W. 156.

A motion to discharge an attachment is addressed to the court and a jury is not allowed—plaintiff may oppose affidavits in discharge with oral testimony—motion to discharge should point out explicitly insufficiency of plaintiff's affidavit—affidavits are not a part of the record—attachment may be dissolved by one of several defendants—order discharging attachment is not appealable under the law of 1890, *Windt v. Banniza* 2 W. 147.

**§7406. Proofs on Motion to Discharge.** §32. If the motion be made upon affidavits upon the part of the defendant, but not otherwise, the plaintiff may oppose the same by affidavits or other evidence in addition to those on which the attachment was issued.

Where a defendant has made affidavits he cannot introduce oral testimony, *Hansen v. Doherty* 1 W. 461. Affidavits not part of record unless expressly made so, *Windt v. Banniza* 2 W. 147.

**§7407. Attachment Must Be Discharged When.** §33. If, upon such application, it satisfactorily appears that the writ of attachment was improperly or irregularly issued, it must be discharged.

Upon dissolution sheriff must return property—subsequent appeal and stay—indemnity bond, *Bank of Lind v. Coss* 83 W. 151.

Two writs levied on same property followed by dissolution includes both writs unless otherwise specified, *Pennsylvania Mtg. Co. v. Gilbert* 18 W. 667.

On discharge of attachment, sheriff's right of possession ceases, and property may be sold, *Anderson v. Land*, 5 W. 493.

In action for wrongful attachment, final judgment in attachment suit is conclusive evidence, *McGill v. Fuller & Co.*, 45 W. 615.

**§7408. Return of Sheriff—Record of Discharge of Real Property.** §34. The sheriff must return the writ of attachment with the summons, if issued at the same time; otherwise, within twenty days after its receipt; with a certificate of his proceedings endorsed thereon or attached thereto; and whenever an order has been made discharging or releasing an attachment upon real property, a certified copy of such order may be filed in the offices of the county auditors in which the notices of attachment have been filed, and be indexed in like manner.

**§7409. Amendment of Proceedings.—Alternative Statements Not Allowed.** §35. This act shall be liberally construed, and the plaintiff, at any time when objection is made thereto, shall be permitted to amend any defect in the complaint, affidavit, bond, writ or other proceeding, and no attachment shall be quashed or dismissed, or the property attached released, if the defect in any of the proceedings has been or can be, amended so as to show that a legal cause for the attachment existed at the time it was issued; and



the court shall give the plaintiff a reasonable time to perfect such defective proceedings. The causes for attachment shall not be stated in the alternative.

Attachment filed and indexed there is no necessity for lis pendens, *Dill v. Bush* 86 W. 525.

Dissolution of attachment upon one ground is not res judicata as to amended affidavit, *Bingham v. Keylor* 25 W. 157.

Affidavit in attachment in case of felony where it alleged that the defendant was the agent of the plaintiff selling goods

on a stipulated commission and converted the entire proceeds, *Brandenstein v. Way* 17 W. 294.

When amendments may be made defects will not avail subsequent attaching creditors—they can only compel amendment, *Fleischner v. Pacific Postal Etc. Co.* 55 Fed. Rep. 738.

**§7410. Orders in Open Court or at Chambers.** §36. The judge of any superior court shall have power to make every order in vacation, which, by the provisions of this act may be made by the court in term time.

**§7411. Act Applies to Constables and Justices.** §37. The word "sheriff", as used in this act, is meant to apply to constables, when the proceedings are in a justice's court; and when the proceedings are in a justice's court, the justice is to be regarded as the clerk of the court for all purposes herein contemplated; Provided, That nothing contained in this act shall be construed to confer upon a justice of the peace power to issue a writ of attachment to be served out of the county in which such justice shall have his office; or to confer upon a sheriff, constable or other officer, power or authority to serve a writ of attachment issued out of justice's court beyond the limits of the county in which such justice shall have his office, except in cases provided for in section twelve of this act [§7390]; And Provided further, That nothing contained in this act shall be construed or held to authorize the attachment of real estate or of any interest therein, under a writ of attachment issued out of any justice's court.

Constables may require indemnity bond as provided by §9527, *Brotton v. Lunkley* 11 W. 581.

## BASTARDY.

**AN ACT** relating to filiation proceedings, providing for the institution, trial, procedure, and judgment and enforcement thereof, in actions to determine the paternity of a child of an unmarried mother and providing for the maintenance of such child and certain expenses of the mother thereof, and providing for the prosecution and punishment of such person. Approved March 25, 1919. L. '19 ch 203.

**§7411-1. Bastardy—Complaint Against Father.** §1. When an unmarried woman shall be pregnant or delivered of a child which shall not be the issue of lawful wedlock, complaint may be made in writing by said unmarried woman, her father, mother or guardian, to any justice of the peace in the county of which she has been a resident for thirty days last past and where she may be so pregnant or delivered, or where the person accused may be found, accusing, under oath, a person with being the father of such child, and it shall be the duty of such justice forthwith to issue a warrant against the person so accused and cause him to be brought forthwith before such justice.

**§7411-2. Preliminary Examination — Commitment — Bond — Action on Bond.** §2. Upon the appearance of the accused, it shall be the duty of such justice to examine the woman, if then present, under oath, in the presence of the man alleged to be the father of the child, touching the charge against him, or, if the woman be not then present, to fix a date for such examination not more than ten days thereafter and to require the accused to give a bond with sufficient surety conditioned that he will appear to answer such charge upon such date, or upon any other date to which such examination may be continued; and in default of the giving of such bond such justice shall cause the accused to be committed to the county jail. The accused shall have the right to controvert such charge and evidence may be heard as in the case of trial of civil actions before such justice. If such justice shall be of the opinion that sufficient cause appears, it shall

be his duty to bind the person so accused in bond with sufficient surety payable to the state of Washington and conditioned that he will appear in the superior court of such county, at such time or times as the judge thereof may fix or order, to answer such complaint, and abide the judgment and orders of the court; or failing therein, that he will pay such sums of money and to such person as may be adjudged by such court; and the justice shall transmit such bond, together with the transcript of his proceedings, the complaint and the other papers in the case, without delay to the clerk of the superior court of such county. And if the accused shall fail to give a bond as required, such justice shall commit him to jail until discharged by law. Such bond, or any bond given by said accused on any continuance or arrest, may be put in suit by any person in whose favor the court may adjudge any sum of money in such proceeding.

**§7411-3. State a Party—Prosecuting Attorney's Duties—Dismissal.** §3. Such proceeding shall be entitled in the name of the state of Washington, and shall be prosecuted in both justice court and the superior court by the prosecuting attorney of the county where brought, and shall not be dismissed except by such prosecuting attorney upon a showing to the court that the provisions herein contemplated to be made for the maintenance, care, education and support of the child have been made.

**§7411-4. Discharge on Giving Bond.** §4. Any person committed to jail for failure to give such bond may be discharged from custody by filing at any time after his commitment, with the clerk of the superior court such bond, to the satisfaction of the said clerk; and a certificate of the clerk to the sheriff shall be sufficient to authorize him to discharge the accused from custody.

**§7411-5. Testimony Reduced to Writing.** §5. The testimony of the mother, or mother to be, shall be by such justice reduced to writing, read carefully to such witness and be by her signed, and shall, by such justice, be returned to the superior court with the other papers in the proceeding, to be used by either party thereto.

**§7411-6. Docketing in Superior Court—Civil Case.** §6. Upon the filing of the transcript, complaint and other papers in the superior court, the clerk thereof shall docket the same, and said complaint shall stand as the complaint therein, and issue shall be joined thereon as now provided in civil actions.

**§7411-7. Tried by Court or Jury.** §7. If the accused in the superior court denies the charge, the issue may be tried by the court or by jury if demanded by either party.

**§7411-8. Judgment of Discharge—Costs Not Required.** §8. If on the trial of the issue joined, the finding or verdict shall be that the child is not the child of the accused, then the judgment of the court shall be that he be discharged: Provided, however, that no court costs shall be required of the complainant for the proceeding before such justice or the superior court.

**§7411-9. Judgment Against Defendant—Bond.** §9. In the event the issue be found against the accused, or whenever he shall, in open court, have confessed the truth of the accusation against him, he shall be charged by the order and judgment of the court to pay a sum to be therein specified, during each year of the life of such child, until such child shall have reached the age of sixteen years, for the care, education and support of such child, and shall also be charged thereby to pay the expenses of the mother incurred during her sickness and confinement, together with all costs of the suit, for which costs execution shall issue as in other cases. And the accused shall be required by said court to give bond, with sufficient surety, to be approved by the judge of said court, for the payment of such sums of money as shall be so ordered by said court. Said bond shall be made payable to the people of the state of Washington, and conditioned for the true and faithful payment of such yearly sums, in equal quarterly installments, to the clerk of said court, which said bond shall be filed and preserved by the clerk of said court.

**§7411-10. Criminal Action Saved.** §10. In addition to the proceedings for enforcing the support of the child heretofore provided for, the accused



may be prosecuted in any criminal proceeding now or hereafter to be provided for by the laws of the State of Washington, relating to the support of minor children by parents or other persons upon whom such children may be dependent for care, education or support.

**§7411-11. Judgment for Payments—Execution.** §11. If the accused shall fail or refuse to give such a bond as may be required by such superior court by virtue of the provisions of section nine, such court shall at any time thereafter, upon application of the mother or guardian, render judgment against the accused for any sum or sums then due and unpaid under the terms of such order and judgment, and execution thereon shall issue from said court; Provided, That the rendition and collection of judgment as aforesaid shall not be construed to bar or hinder the taking of similar proceedings for the collection of judgment for the nonpayment of any sum or sums becoming due and unpaid thereafter.

**§7411-12. Inability to Pay—Discharge.** §12. If the accused shall refuse and neglect to give such security as may be ordered by the court, under the provisions of section nine, he shall be committed to the county jail for contempt of court, there to remain until he shall comply with such order, or until otherwise discharged by due course of law. Any person so committed may at any time petition the court for a hearing as to his inability to comply with the order of the court and the court shall thereupon fix a time for the hearing of such petition which hearing shall be not less than ten days after the date of service of said petition on the prosecuting attorney. The prosecuting attorney may however waive the said ten day period in whole or in part. At the hearing the defendant shall be examined on oath in reference to the facts set forth in such petition and his ability to comply with such judgment and order, and any other legal evidence in reference to such matters may be produced by any of the parties interested. If it appears that the defendant is unable to comply with such judgment and order, the court may direct his discharge from custody, upon his making affidavit that he has not in his own name any property, real or personal, and has no such property conveyed or concealed, or in any manner disposed of with design to secure the same to his use or to avoid in any manner compliance with such judgment and order. If upon such hearing it appears that the defendant has property, but not sufficient to comply with such judgment and order, the court may make such order concerning the same, in connection with such discharge, as justice may require.

**§7411-13. Money Paid to Mother—How Expended.** §13. The judgment money, when received by said clerk either by payment by the accused or by execution against the accused or against the sureties, shall be paid to the mother or guardian of such child, if a guardian therefor be appointed, and shall be laid out for the support, care and education of such child in such manner as shall be directed by the court.

**§7411-14. Citation to Sureties—Judgment—Execution.** §14. Whenever default shall be made in the payment of the quarterly installments, or any part thereof, specified in the bond provided for in section nine, the superior court of the county wherein such bond is filed shall, at the request of the mother, guardian, or any person interested in the support of such child, issue a citation to the principal or sureties in such bond requiring them to appear on some day in said citation mentioned and show cause, if any there be, why execution should not issue against them for the amount of the installment or installments due and unpaid on said bond. And if the amount due on such installment or installments shall not be paid at or before the time mentioned for showing cause, as aforesaid, such court shall render judgment in favor of the people of the state of Washington, and the complainant or guardian, against the principal and sureties who have been served with such citation for the amount unpaid of the installment or installments on the bond, and the cost of such proceeding, and execution shall issue in due form from said court upon said judgment.

**§7411-15. Contempt—Execution—Modification.** §15. Such court shall also have the power, in case the accused does not obey the order thereof, and in case of default in the payment when due, of any installment or installments, or any part thereof, in the conditions of the said bond men-

tioned, to adjudge the accused guilty of contempt of court by reason of the nonpayment as aforesaid, and order him to be committed to the county jail in such county until the amount of said installment or installments so due shall be fully paid, together with all the costs of such commitment, but the commitment of the accused shall not operate to stay or defeat the obtaining of judgment and collection thereof by execution: Provided, that the rendition and collection of judgment, as aforesaid, shall not be construed to bar or hinder the taking of similar proceedings for the collection of subsequent installments on said bond as they shall become due or remain unpaid. Provided further, that any judgment entered herein may be modified at any time upon proper showing to the court.

**§7411-16. Limitation of Action.** §16. No prosecution under this act shall be brought after two years from the birth of the child: Provided, the time during which any person accused shall be absent from the state shall not be computed.

**§7411-17. Abatement for Death of Mother Denied—Evidence.** §17. The death of the mother shall not abate the proceeding, if the child be living; but a suggestion of record of the fact shall be made, and the testimony of the mother taken in writing before aforesaid justice may be read in evidence by either party, and shall have the same force as though she were living and had testified to same in court.

**§7411-18. Abatement for Death of Child Denied—Judgment.** §18. The death of such child shall not cause the abatement or bar to any prosecution hereunder; but the court trying the same, on conviction, shall give judgment for such sum as shall be deemed just.

**§7411-19. Custody and Name of Child.** §19. If the mother be a suitable person she shall be awarded the custody and control of said child; if she be not a suitable person, the court may deliver the care and custody of said child to any reputable person, including the accused, charitable or state institution. Such order and judgment may further provide, in the discretion of the court, that the surname of the accused shall henceforth be the lawful surname of such child.

## BOUNDARIES.

Counties, action to establish §1488; joint Resurvey by county engineer §1775.  
survey §1476.

**AN ACT to provide for the re-establishment of lost and uncertain boundaries to lands.** Approved January 16, 1886. Laws '86 p 104.

**§7412. Action to Determine.** §1. That whenever the boundaries of lands between two or more adjoining proprietors shall have been lost, or by time, accident or any other cause, shall have become obscure, or uncertain, and the adjoining proprietors cannot agree to establish the same, one or more of said adjoining proprietors, may bring his civil action in equity, in the superior court, for the county in which such lands or a part of them are situated, and such superior court, as a court of equity may upon such complaint order such lost or uncertain boundaries to be erected and established and properly marked.

Survey without notice to interested parties does not establish lines, *Jackman v. Germain* 96 W. 415.

Title by adverse possession set up in cross complaint, complaint cannot be amended to re-establish original line, issue immaterial—costs, *Porria v. Castle Rock* 82 W. 103.

Parties claiming by deeds rather than adverse possession, survey first before oral evidence, *Snell v. Stelling* 83 W. 248.

Action for possession had determined title, held boundary a question for the court, *Weidlich v. Independent Asphalt Pav. Co.* 94 W. 395.

Proceedings subject to the rules of adverse possession, *Wissinger v. Reid*, 69 W. 684.

Available only where the court cannot say from the evidence that a corner is lost or uncertain, *Hale v. Ball*, 70 W. 435.

Possession under mistaken boundary sufficient, *Wissinger v. Reid*, 69 W. 684.

Law fixes corner where survey located in rather than correct survey—no estoppel by agreement not carried out—reputation of location, *Inman v. Pearson* 47 W. 402.

Government corner or if lost government rules for its relocation control, *King v. Carmichael* 45 W. 127.

Action to establish lost corner—commissioner—evidence—default—defense before judgment, *Strunz v. Hood* 44 W. 99.

In the absence of monuments or evidence of their location, official field notes



control, *Stangair v. Roads* 41 W. 583.

*Elliott* 7 W. 205.

Corner stones of donation claim clearly Courts will uphold government surveys, proven prevail over field notes, *Cadeau v. Shackley v. Brown*, 1 W. T. 464.

**§7413. Commissioners to Be Appointed.** §2. Said court may in its discretion appoint commissioners not exceeding three competent and disinterested persons one or more of whom shall be practical surveyors, residents of the state, which commissioners shall be, before entering upon their duties, duly sworn to perform their said duties faithfully, and the said commissioners shall thereupon survey, erect, establish and properly mark said boundaries, and return to the court a plat of said survey and the field notes thereof, together with their report; said report shall be advisory and either party may except thereto in the same manner as to a report of referees.

Relative value of evidence and field notes, *Reed v. Firestack* 93 W. 148.

tionary, not reviewable on appeal—one commissioner—failure to take oath, *Jaggy v. Rooney* 61 W. 381.

**§7414. Procedure—Lis Pendens.** §3. That the proceedings shall be conducted as other civil actions, and the court on final decree, shall apportion the costs of the proceedings equitably, and the cost so apportioned, shall be a lien upon the said lands severally, as against any transfer or incumbrance made of, or attaching to said lands, from the time of the filing of the complaint: Provided, A notice of lis pendens, is filed in the auditor's office of the proper county, in accordance with law.

Defendant prevailing on cross complaint to have costs, *Porria v. Castle Rock* 82 W. 103.

## CERTIORARI.

Rules supreme court §7338a.

### CERTIORARI, MANDAMUS AND PROHIBITION.

**Substitute—AN ACT** regulating special proceedings of a civil nature. Approved March 13, 1895. Laws '95 p 114.

**§7415. How Parties Designated.** §1. The party prosecuting a special proceeding may be known as the plaintiff, and the adverse party as the defendant.

Power of judge limited to express authority, §8368.

name of person only—amendment to add state, *State ex rel. Clcoria v. Corgiat* 50 W. 95.

Costs in special proceedings, §7473.

Action by complaint and summons in

**§7416. Judgment and Order Defined.** §2. A judgment in a special proceeding is the final determination of the rights of the parties therein. The definitions of a motion and an order in a civil action are applicable to similar acts in a special proceeding.

Judgments in general, §8078; motions and orders, §8077.

## CERTIORARI.

**§7417. Certiorari and Review.** §3. The writ of certiorari may be denominated the writ of review.

**§7418. What Courts May Grant Writ—Certiorari Supplements Appeal.** §4. A writ of review shall be granted by any court, except a police or justice court, when an inferior tribunal, board or officer, exercising judicial functions, has exceeded the jurisdiction of such tribunal, board or officer, or one acting illegally, or to correct any erroneous or void proceeding, or a proceeding not according to the course of the common law, and there is no appeal, nor in the judgment of the court, any plain, speedy and adequate remedy at law.

Appeal to supreme court, §7290; to superior court from justice's, §§9401, 9444; from state land commissioners, §6447.

Former decisions holding certiorari concurrent with prohibition overruled, *State ex rel. Meyer v. Clifford* 78 W. 555.

Will not lie to review refusal of court to permit substitution defendants in condemnation case after order of condemnation, *State ex rel. Grant Realty Co. v. Superior Court* 76 W. 376.

Will not lie to review order denying motion to strike complaint in intervention, *State ex rel. Rutter v. Superior Court* 91 W. 304.

Will lie to review action of superior

court ancillary to case on appeal, State ex rel. Angeles B. & M. Co. v. Superior Court 89 W. 342.

Will lie to review exercise of eminent domain, Chicago, M. & St. P. R. Co. v. Slosser 82 W. 467.

Will not lie to review state board of equalization, State ex rel. Oregon-W. R. & N. Co. v. Clausen 82 W. 1.

Will lie to extend time for statement of facts on appeal when stenographer could not transcribe evidence, State ex rel. Sefrit v. Superior Court 74 W. 601.

Will not lie to correct state board of equalization of taxes, because of short session, State ex rel. Spokane, etc., R. Co. v. State Board, etc. 75 W. 90.

Will lie to review refusal to appoint administrator of partnership where time expires, State ex rel. Keasal v. Superior Court 76 W. 291.

Will not lie in behalf of state to review release of prisoner on habeas corpus, State ex rel. Shattuck v. French 82 W. 330.

Will not lie to review discretion of county commissioners in fixing salary of court commissioner, State ex rel. Yeargin v. Maschke 90 W. 249.

Will lie to review school directors' dismissal of teacher when county officer to whom appeal would lie has prejudged case, State ex rel. Caffrey v. Court 72 W. 444.

Will not lie to prevent vexatious orders of court causing parties to be brought in, State ex Langley v. Court, 73 W.

Will not lie in election contest, State ex Quigley v. Court, 71 W.

Will not lie to review denial of temporary injunction unless insolvency shown, State ex Coombs v. Court, 69 W. 439.

Will not lie to review order adjudging a public use in eminent domain, State ex Bremer v. Court, 68 W. 51.

Quashed when issued to review Civil Service Commission, King v. Listman, 63 W. 271.

Will not lie to review order refusing to quash summons, State ex Coplen v. Court, 66 W. 225.

Is only remedy for error in sustaining demurrer to intervention in condemnation proceedings, State ex rel. Schmidt v. Superior Court, 62 W. 556.

Writ will not lie to review lease of county property by county commissioners, Sweeney v. County Commissioners 43 W. 138.

Writ does not issue to review condemnation in absence of claim of error, State ex rel. McCormick 43 W. 91.

Condemnation cases limited to thirty days, State ex rel. Alexander v. Superior Court 42 W. 684.

Time of taking same as appeal—appeal not inconsistent, State ex rel. Tumwater P. & W. Co. v. Superior Court 56 W. 287.

This act repeals all former statutes relating to certiorari by implication, Leavitt v. Chambers 16 W. 353.

Is discretionary writ and will issue as each case may require, State ex rel. Grady v. Lockhart 17 W. 531.

Record must be taken up on appeal to supreme court by bill or statement, Taylor v. Tacoma 15 W. 92.

Certiorari is remedy against superior court fixing appeal bond contrary to law.

State ex rel. Bank v. Superior Court 14 W. 365.

Certiorari will not lie to review action of superior court in fixing supersedeas bond, State ex rel. Commercial Nat. Bank v. Superior Court 14 W. 365.

Certiorari is proper method of reviewing street assessment, Wilson v. Seattle 2 W. 543.

Certiorari must be applied for in reasonable time—will not lie to review street assessment when there is foreclosure in the courts, Spooner v. Seattle 6 W. 370.

Certiorari will not lie from order refusing to vacate judgment, Lewis v. Gilbert 5 W. 534.

Briefs in certiorari are governed by rules on appeal, State ex rel. Gilbert v. Moore 5 W. 205.

Certiorari will lie regardless of amount involved if superior court is proceeding without proper service of summons, State ex rel. Boyd v. Superior Court 6 W. 353.

Certiorari will not lie to review action of superior court in granting new trial, State ex rel. Tibbals v. Superior Court 6 W. 201.

Certiorari will not lie to review conditional order of discharge of administrator, State ex rel. Riser v. Superior Court 13 W. 25.

Appeal being adequate certiorari will not lie under §1947-13, State ex rel. Nelson v. Superior Court 31 W. 32.

Certiorari will lie to review condemnation cases in the superior court by private corporations, Seattle & Montana Ry. v. Bellingham Bay etc. Ry. Co. 29 W. 491.

There being no appeal certiorari will lie to review condemnation case, State ex rel. Smith v. Superior Court 30 W. 219.

Certiorari will not lie when there is appeal, State ex rel. Norris Safe & L. Co. v. Superior Court 30 W. 177.

Writ will not lie to review enactment of ordinance by city council—remedy suggested, Tenny v. Seattle Electric Co. 48 W. 150.

Writ will lie to review inordinate expenditures by administrator, State ex rel. Speckart v. Superior Court 48 W. 141.

Only remedy to review condemnation of county road, Whatcom County v. Yellowknife 48 W. 90.

Does not lie to review denial of motion to dismiss action on stipulation, State ex rel. Smith v. Superior Court 47 W. 508.

Will lie to review change of venue, State ex rel. Schwabacher & Co. v. Superior Court 61 W. 681.

Will lie to review necessity and public use in eminent domain, there being no appeal, State ex rel. Pagett v. Superior Court 46 W. 35.

If there is adequate remedy by appeal certiorari will not lie as in condemnation by cities, State ex rel. Nor. Pac. R. Co. v. Superior Court 46 W. 303.

Will lie to review right to public office, State ex rel. Royse v. Superior Court 46 W. 616.

In review of adjudication of public use for county road, other questions cannot be inquired into, State ex rel. Pagett v. Superior Court 47 W. 11.

Action dismissed, certiorari to review order relating to commission to take testimony will be dismissed, State ex rel. Cliff-



ford v. Superior Court 47 W. 35.

Will not lie from order quashing writ of restitution in forcible entry and detainer, State ex rel. Wilkeson Coal etc. Co. v. Superior Court 49 W. 203.

Will not lie at instance of prosecuting attorney to review order of court directing grand jury to not allow stenographic notes, State ex rel. Pugh v. Superior Court 52 W. 484.

Will not lie to review reprimand of military court martial where no loss of rank, State ex rel. Case v. Mead 52 W. 533.

Will not lie to review temporary injunction nor striking complaint, State ex rel. Mohr v. Superior Court 54 W. 225.

Will not lie to review order for inspection of papers, State ex rel. Seattle General Contracting Co. v. Superior Court 56 W. 649.

Will not lie to review order vacating default judgment, Jones v. Paul 56 W. 355.

Is only remedy to review order adjudging public use in eminent domain or refusal to vacate such order, North Coast R. Co. v. Gentry 58 W. 80.

Certiorari will lie to review ex parte orders in probate, In re Sullivan's Estate 36 W. 218.

Writ will not lie at instance of receiver to review order dismissing him, State ex rel. Casedy v. Interstate etc. Co. 36 W. 80.

Will not lie to vacate default judgment in tax foreclosure, State ex rel. Harris v. Superior Court 34 W. 248.

Will not lie to review appointment of guardian without jurisdiction, remedy is appeal, State ex rel. Young v. Denney 34 W. 56.

Writ will lie against order quashing execution and supersedeas, State ex rel. Sprague v. Superior Court 32 W. 693.

Writ obtained after ninety days—order appointing guardian vacated, State ex rel. Lowary v. Superior Court 41 W. 450.

Certiorari will not lie to review an order denying leave to bring action against a receiver, State ex rel. Whitehouse v. Superior Court 38 W. 23.

Writ on order of the court attested by the clerk is sufficient, Corbett v. Civil Serv. Com'n. 33 W. 190.

Writ will review action of county board of equalization, injunction being inadequate and held; that assessor cannot change list after filing and that valuation of realty is void unless changed on notice which must be double the time if served by mail, Lewis v. Bishop 19 W. 312.

Appeal is remedy and writ will not issue to municipal or inferior court, Falsetto v. Seattle 18 W. 509; State ex rel. Meymouth v. Lockhart 28 W. 460; but see Seattle v. Pearson 15 W. 575; Woodbury v. Henningsen 11 W. 12.

If appeal inadequate as in taking pri-

§7419. **Application Ex Parte or on Notice.** §5. The application must be made on affidavit by the party beneficially interested, and the court may require a notice of the application to be given to the adverse party, or may grant an order to show cause why it should not be allowed or may grant the writ without notice.

§7420. **To Whom Writ Directed—Return.** §6. The writ may be directed to the inferior tribunal, board or officer, or to any other person having the custody of the record or proceedings to be certified. When directed to a tribunal, the clerk, if there be one, must return the writ with the transcript required.

vate property without compensation—light, air and access held to be property, State ex rel. Smith v. Superior Court 26 W. 278.

In certiorari for justice refusing change of venue petition for writ must show there is a defense, State ex rel. Grady v. Lockhart 18 W. 530.

Certiorari invoked to review decision of state board of equalization, Hays v. Merchants' Bank 10 W. 573.

Certiorari will not lie to review order appointing general administrator after will revoked and appeal by executor because such executor has appeal from such order, State ex rel. Richardson v. Superior Court 28 W. 677.

Certiorari will not lie from order refusing to discharge receiver when appeal is pending though expenses and management of receiver may injure business, State ex rel. Oudin v. Superior Court 28 W. 584.

Writ to review revocation of teacher's certificate by state superintendent and held that conduct not involving moral turpitude was insufficient to revoke certificate, Browne v. Gear 21 W. 147.

Jurisdictional amount must appear before supreme court will grant writ, State ex rel. Gillette v. Superior Court 22 W. 496.

Where appeal would be of no avail as in custer of office, the term expiring, writ will lie, State ex rel. Meredith v. Tallman 24 W. 426.

Will not be granted for diminution of record until record has been certified up, Kennedy Drug Co. v. Keyes Drug Co. 53 W. 499.

Writ may issue without notice and bond or a recital of errors, and, held, that announcement of nomination by presiding officer in the absence of fraud or oppression will be accepted by the court, State ex rel. Cann v. Moore 23 W. 276.

Writ will not be quashed because officers have been required to certify nomination by mandate, id.

Writ issued by clerk is irregular, Leavitt v. Chambers 16 W. 353.

Cited 75 W. 90; 81 W. 358.

Will not lie to review order of superior court suspending payment of costs on appeal in amounts less than \$200, State ex Simpson v. Smith 102 W. 574.

Will lie to review refusal of change of venue, State ex Griffith v. Court 96 W. 41.

Will not lie to review refusal of removal of condemnation case to federal court, State ex Stone v. Court 98 W. 377.

Will lie to review refusal of change of venue, State ex Secord v. Brinker, 99 W. 222.

Will not lie to review refusal of removal of cause to federal court, State ex Stone v. Court, 98 W. 377.

Bond not liable for causes added after 99 W. 601.  
discharge of attachment, Petri v. Manny, Cited 75 W. 90.

**§7421. Review Commands Matter to Be Certified Up—Prohibition.**

§7. The writ of review must command the party to whom it is directed to certify fully to the court issuing the writ, at a specified time and place, a transcript of the record and proceedings (describing or referring to them with convenient certainty), that the same may be reviewed by the court: and requiring the party, in the meantime, to desist from further proceedings in the matter to be reviewed.

Review of tax valuation by public service commission held not stay, Spokane & I. E. R. Co. v. Spokane County 75 W. 72. Return not made in time action will be dismissed, State ex rel. North Shore etc. Co. v. Superior Court 46 W. 169.  
Supreme court on hearing will consider only record made below, Swope v. Seattle Cited 75 W. 90.

**§7422. Prohibition May Be Omitted.** §8. If a stay of proceedings be not intended, the words requiring the stay must be omitted from the writ; these words may be inserted or omitted, in the sound discretion of the court, but if omitted the power of the inferior court or officer is not suspended or the proceedings stayed.

Cited 75 W. 72.

**§7423. Bill of Exceptions—Judgment.** §9. Questions of fact not apparent of record may be presented by bill of exception, and the court shall review the same, and, in case there is error, shall render such judgment in the case as of right ought to be entered, or reverse and remand the cause for further proceedings.

Exceptions on appeal, §7305. Only such judgment should be entered as should have been entered by court reviewed—costs in certiorari, Bringgold v. Demurrer because errors not specifically pointed out properly overruled, Corbett v. Civil Serv. Com'n. 33 W. 190. Spokane 19 W. 333. Cited 75 W. 90.

**§7424. Service of the Writ.** §10. The writ may be served as follows; except where different directions, respecting the mode of service thereof are given by the court granting it.

1. Where it is directed to a person or persons by name or by his or her official title or titles, or to a municipal corporation, it must be served, upon each officer or other person, to whom it is directed, or upon the corporation, in the same manner as a summons.

2. Where it is directed to a court, or to the judges of a court, having a clerk appointed pursuant to law, service upon the court, or the judges thereof, may be made by filing the writ with the clerk.

Return must be made by judge if writ to superior court, State ex rel. Coughlin v. Sachs 3 W. 496.

**§7425. Further Return May Be Required—Trial and Judgment.** §11. If the return of the writ be defective, the court may order a further return to be made. When a full return has been made, the court must hear the parties, or such of them as may attend for that purpose, and may thereupon give judgment, either affirming, or annulling, or modifying the proceedings below.

Writ directed to judge cannot be certified by clerk—failure of judge to act, State v. Sachs, 3 W. 496. Defendant may move to quash—amendment of motion, Spooner v. Seattle, 6 W. 370.

**§7426. Questions to Be Determined—Remittitur.** §12. The questions involving the merits to be determined by the court upon the hearing are:

1. Whether the body or officer had jurisdiction of the subject matter of the determination under review.

2. Whether the authority, conferred upon the body or officer in relation to that subject matter, has been pursued in the mode required by law, in order to authorize it or him to make the determination.

3. Whether in making the determination any rule of law affecting the rights of the parties thereto has been violated to the prejudice of the relator.

4. Whether there was any competent proof of all the facts necessary to be proved, in order to authorize the making of the determination.

5. If there was such proof, whether there was, upon all the evidence, such a preponderance of proof, against the existence thereof, rendered in an action in a court, triable by a jury, would be set aside by the court, as against the weight of evidence.



Order of commissioner of public lands Reviewing court will only correct error canceling deed vacated because all the and remand, State ex rel. Grady v. Lock-evidence could not be brought up, Crouch hart 18 W. 531; Browne v. Gear 21 W. v. Ross 83 W. 73. 147.

**§7427. Form of Writ. §13.** A copy of the judgment signed by the clerk, must be transmitted to the inferior tribunal, board or officer having the custody of the record or proceeding certified up.

**§7428. Judgment Roll. §14.** A copy of the judgment signed by the clerk, entered upon or attached to the writ and return, constitute the judgment roll.

### Return—Hearings—Practice—Appeals—§8300

## CONSTRUCTION.

Bills lading in cases not provided by law Local assessment act in cities to be liberal §478. §1058.

Common law supplements statute §8252. Telegraph messages same as original §7788.  
Criminal code construed according to "fall Territory and state convertible terms §7441.  
import" of terms §8733.

**§7429. "District" and "County" Convertible Terms. §754.—754.** For all necessary purposes connected with the district court each district shall be considered and held to be but one county; and whenever in this act the words district or county occur, the same may be rendered county or district, as may be necessary: Provided, That nothing herein contained shall be construed to confer jurisdiction upon county officers or extend their powers beyond the limits of their counties.

Construction of code 1881 and former 1895.  
laws, §1351.

Territory and state convertible terms, §7441. "Persons" construed singular, State v. Nugent 20 W. 522.

The original provisions of this act relating to construction are retained, although substituted in part by §7440. The state is not a "person" under statute allowing injunction for waste as provided by §8559, McBride v. Commissioners of Pierce County 44 Fed. Rep. 17.

Construction of civil practice act, 81

**§7430. "Officer" Means Person Performing Duty. §755.—755.** Whenever any term indicating an officer is used, it shall be construed, when required, to mean any person authorized by law to discharge the duties of such officer.

**§7431. Bonds Shall Not Fail for Want of Form or Substance. §749.—749.** No bond required by law and intended as such bond shall be void for want of form or substance, recital or condition; nor shall the principal or surety on such account be discharged; but all the parties thereto shall be held and bound to the full extent contemplated by the law requiring the same, to the amount specified in such bond. In all actions on such defective bond, the plaintiff may state its legal effect, in the same manner as though it were a perfect bond.

Bond "for" appellant instead of "against" him held good, Rupe v. Kemp, 99 W. 371.

Does not apply to bond not required by law, School Dist. v. Qualls, 95 W. 247.

No bond shall fail in probate procedure, §9959.

No recognizance shall fail in criminal proceedings, §9350.

General rules of pleading, §8368.

Bonds in criminal proceedings by entry of order without their formal execution, §9181.

Does not cure absence of sureties on appeal bond, Wenatchee Orchard etc. Co. v. Thompson 60 W. 643.

Bond to secure liens for work on public building is good though principal has not signed, Eureka Sandstone Co. v. Long 11 W. 161.

Bond to secure liens in construction of school house is good though made to the school district, Ihrig v. Scott 5 W. 584.

Use of word "plaintiff" for "defendant" in appeal bond will not invalidate it, Dosssett v. St. Paul & T. Lumber Co. 31 W. 489.

Signing of indemnity bond in replevin by attorney without authority binds party obtaining property and sureties, Arthur v. Sherman 11 W. 254.

Money bail in criminal cases, §9184.

**§7432. Notices to Be in Writing—Service—Proof of Service. §746.—746.** In all cases where notice is required by this act, it shall be in writing, and must be duly served upon the party. If served by an officer whose duty it is to serve process, his return shall be sufficient. It may be served, however, when not otherwise especially provided herein, by any disinterested person, in which event, proof [of] service must be established by the affidavit of the person making such service. Provided, that the written admission of

service of the party, his agent or attorney shall be equivalent to personal service.

**§7433. Number and Gender. §756.—756.** Words importing the singular number only may also be applied to the plural of persons and things, and words importing the masculine gender only, may be extended to females also.

"Widower" cannot be read for "widow," *Whittlesey v. Seattle* 94 W. 645.

**§7434. Code to Be Liberally Construed. §758.—758.** The provisions of this act shall be liberally construed and shall not be limited by any rule of strict construction.

**AN ACT to amend Section 743 of Chapter 64 of the Code of Washington, relating to the computation of time in which an act is to be done.** Approved January 27, 1888. General repeal. Laws '88 p 32.

**§7435. Computation of Time. §743.** The time within which an act is to be done, as herein provided, shall be computed by excluding the first day, and including the last, unless the last day is a holiday or Sunday, and then it is also excluded. L. '88 32.

Fraction of a day counted full day, *State ex Greb v. Hurn*, 102 W. 328. *Kubillus v. Ewert* 40 W. 38.

Sunday and holiday, last days, both excluded, *Hidden v. Washington-O. Corp.* 217 Fed. 303.

Notice in foreclosure of chattel mortgage sustained, *Allen v. Morris* 87 W. 268.

Computation of time, §8461; negotiable instruments "reasonable time" and holidays, §4264.

Sundays and legal holidays excluded in computing time of motion for new trial,

Sunday intervening is to be counted, *Martin v. Sunset Tel. & Tel. Co.* 18 W. 260.

Notice on day following expiration of time sufficient where parties in different cities and notice mailed in sufficient time to reach party to be served, *Bank of Shelton v. Willey* 7 W. 535.

Intervening holiday does not extend time, *Thompson v. Huron Lumber Co.*, 5 W. 527.

**§7436. "Months" Means Calendar Months. §759.—759.** That the word "month" or "months" whenever the same occurs in the statutes of this state now in force, or in statutes hereafter enacted or in any contract made in this state shall be taken and construed to mean calendar.

**§7437. This Act Continuation of Former Acts. §761.—761.** The provisions of this act so far as they are substantially the same as existing statutes, must be construed as continuations thereof and not as new enactments.

**§7438. Act Covers Entirely the Subjects to Which It Relates. §762.—762.** No statute law or rule is continued in force because it is consistent with the provisions of this act on the same subject; but in all cases provided for by this act all statutes, law, and rules heretofore in force in this state whether consistent or not with the provisions of this act unless expressly continued in force by it, are repealed and abrogated.

**7439. Repeal Does Not Revive Former Law. §763.—763.** This repeal or abrogation, does not revive the former law heretofore repealed nor does it affect any rights already existing or accrued, or any action or proceeding already taken, except as in this act provided; nor does it affect any private statute not expressly repealed.

**Substitute—AN ACT concerning the construction of statutes.** Approved February 24, 1891. Laws '91, p 40.

**§7440. Rules of Construction. §1.** The following provisions relative to the construction of statutes shall be rules of construction and shall constitute a part of the code of procedure of this state.

The provisions of this code shall be liberally construed, and shall not be limited by any rule of strict construction.

The provisions of a statute, so far as they are substantially the same as those of a statute existing at the time of their enactment, must be construed as continuations thereof.

The term "person" may be construed to include the United States, this state, or any state or territory, or any public or private corporation, as well as an individual.

Words importing the singular number may also be applied to the plural of persons and things; words importing the plural may be applied to the singular; and words importing the masculine gender may be extended to females also.



That the word "month" or "months" whenever the same occurs in the statutes of this state now in force, or in statutes hereinafter enacted, or in any contract made in this state, shall be taken and construed to mean "calendar month."

Supplementary—AN ACT providing the words Territory and Territory of Washington, shall be construed to mean State and State of Washington, and declaring an emergency to exist. Approved December 13, 1889. Laws '89 p 94.

§7441. **Territory and State Convertible Terms.** §1. Wherever in the laws now in force in the State of Washington, or in the laws of the Territory of Washington as continued in force by virtue of the acts of congress as under the operations and provisions of the constitution of this state the words territory and Territory of Washington shall be used, the same shall be construed to mean state and state of Washington.

## CONTEMPTS.

Contempt punished pleaded in mitigation Garnishee liable? §8015.

of crime §8708.

Military courts §3765-137.

Criminal contempts §8786.

Powers of courts—contempts §8564.

§7442. **Contempts Defined.** §725.—725. The following acts or omissions, in respect to a court of justice or proceedings therein, are deemed to be contempts of court:

1. Disorderly, contemptuous or insolent behavior toward the judge while holding the court, tending to impair its authority or to interrupt the due course of a trial or other judicial proceedings.

2. A breach of peace, boisterous conduct or violent disturbance tending to interrupt the due course of a trial or other judicial proceeding.

3. Misbehavior in office or other willful neglect or violation of duty by an attorney, clerk, sheriff, or other person appointed or selected to perform a judicial or ministerial service.

4. Deceit, abuse of the process or proceedings of the court by a party to an action, suit or special proceeding.

5. Disobedience of any lawful judgment, decree, order or process of the court.

6. Assuming to be an attorney or other officer of the court and acting as such without authority in a particular instance.

7. Rescuing any person or property in the lawful custody of an officer, held by such officer under an order or process of such court.

8. Unlawfully detaining a witness or party to an action, suit or proceeding, while going to, remaining at or returning from the court where the same is for trial.

9. Any other unlawful interference with the process or proceedings of a court.

10. Disobedience of a subpoena duly served, or refusing to be sworn or answer as a witness.

11. When summoned as a juror in a court, improperly conversing with a party to an action, suit or proceeding to be tried at such court, or with any other person in relation to the merits of such action, suit or proceeding, or receiving a communication from a party or other person in respect to it, without immediately disclosing the same to the court.

12. Disobedience by an inferior tribunal, magistrate or officer, of the lawful judgment, decree, order or process of a superior court, or proceeding in an action, suit or proceeding, contrary to law, after such action, suit or proceeding shall have been removed from the jurisdiction of such inferior tribunal, magistrate or officer.

Power of courts generally, §8564.

Service of process must be personal, §8458.

Contempt of order of court by person or officer, §7829.

Contempt of injunction, §8066; of order to make deposit in court, §8417; in garnishment, §8015.

Contempt in proceedings supplementary to execution, §7944; divorce decree prohibiting marriage within six months, §7516; witness to testify before officer taking deposition, §7743.

Contempts before justices of the peace, §9420.

Circulating pamphlet in court room re

flecting on trial judge and interrupting proceedings is contempt—arrest next day—no hearing—punishment excessive, *In re Willis* 94 W. 180.

No inherent right in any judge to try constructive contempt and judges may be changed, *State ex rel. Russell v. Superior Court* 77 W. 631.

Newspaper comment on evidence before grand jury not contempt, *State v. Sefrit* 84 W. 345.

Under subd. 5 element of wilfulness need not be present, *Wright v. Suydam* 79 W. 550.

Order of court to deliver goods executed by constructive delivery can not be further executed by contempt process, *Drasdo v. Beck* 37 W. 363.

Appeal from contempt order will not divest lower court of power to make another order on another installment of same judgment for alimony in divorce, *State ex rel. Smith v. McClinton* 17 W. 45.

Contemptuous publication pending appeal of cause is punishable, *State v. Tugwell* 19 W. 238.

Court cannot enforce orders in proceedings supplementary to execution of contempt process, *In re Coulter* 25 W. 526.

Courts have inherent power to enforce payment of alimony by contempt process, *In re Cave* 26 W. 213.

The fact that owner had not given bond when court ordered mortgage delivered to him is no defense by mortgagee for contempt in meddling with property, *State ex rel. Brown v. McFaul* 27 W. 286.

**§7443. Punishment for Contempt.** Every court of justice, and every judicial officer has power to punish contempt by fine or imprisonment, or both. But such fine shall not exceed three hundred dollars, nor the imprisonment six months; and when the contempt is not of those mentioned in sub-divisions one and two of the last section, it must appear that the right or remedy of a party to an action, suit or proceeding was defeated or prejudiced thereby before the contempt can be punished otherwise than by a fine not exceeding one hundred dollars.

Fine of \$200 is error where right of party has not been defeated, *Wright v. Suydam* 79 W. 550.

Substantial damage by violation of order must be shown to warrant punishment for contempt by more than a fine of \$100.00, *State v. Erickson*, 66 W. 639.

Court exceeded its authority in imposing

Court improperly dismissed contempt proceedings when affidavit and order had issued, *State ex rel. Smith v. Smith* 17 W. 431.

Where decree adjudicated water rights and party to action asserted right under deed but failed to show right in grantor: such assertion is contempt, *State ex rel. Stevens v. Catlin* 21 W. 423.

Demand for alimony decreed is not necessary when defendant asserted he would never pay—when defendant appears he cannot complain attachment did not issue, *State ex rel. Ditmar v. Ditmar* 19 W. 324.

Void injunction is not binding and will not subject party to contempt, *Savage v. Sternberg* 19 W. 679.

Disobedience of order made without jurisdiction is not contempt, *State ex rel. Evans v. Winder* 14 W. 114.

Court without jurisdiction of subject matter cannot enforce contempt, *State ex rel. News Pub. Co. v. Milligan* 3 W. 144.

Order on president of bank to return securities taken before summons and appointment of receiver is void and not punishable, *State ex rel. Boardman v. Ball* 5 W. 387.

Subdivision 5 applies to parties to the action or their privies, servants, etc.—summary arrest without bail sustained, but time given to plead, and party allowed to go on his own recognizance, *State ex rel. Victor Boom Co. v. Peterson* 29 W. 571.

One not a party to the action is not liable in contempt for failure to turn over property to receiver, *State v. Dunham* 30 W. 643.

**§726.—726.** Every court of justice, and every judicial officer has power to punish contempt by fine or imprisonment, or both. But such fine shall not exceed three hundred dollars, nor the imprisonment six months; and when the contempt is not of those mentioned in sub-divisions one and two of the last section, it must appear that the right or remedy of a party to an action, suit or proceeding was defeated or prejudiced thereby before the contempt can be punished otherwise than by a fine not exceeding one hundred dollars.

Fine of \$100 and thirty days in jail—contempt a civil proceeding, *State ex rel. Dye v. Reilly* 40 W. 217.

Discretion of court in punishment though it is void in part will not be interfered with—intendments in favor affidavit—judicial notice of order violated, *State ex rel. San-der v. Jones* 20 W. 576.

**§7444. Contempt Committed in Court.** When a contempt is committed in the immediate view and presence of the court or officer, it may be punished summarily, for which an order must be made reciting the facts as occurring in such immediate view and presence, determining that the person proceeded against is thereby guilty of contempt, and that he be punished as therein prescribed.

Advising disobedience of void order held not contempt—attorney directed to apologize, refusing, held guilty but reversed on appeal, *State ex rel. Martin v. Pendergast* 39 W. 132.

**§7445. Contempt Out of Court—Affidavit and Warrant.** §728.—728. In cases other than those mentioned in the preceding section, before any proceedings can be taken therein, the facts constituting the contempt must be shown by an affidavit presented to the court or judicial officer, and thereupon such court or officer may either make an order upon the person charged to show cause why he should not be arrested to answer, or issue a warrant of arrest to bring such person to answer in the first instance.

Constructive contempt must be shown by affidavit, not parol—press comment held not contempt, *State ex rel. Dorrier v. Hazeltine* 82 W. 81.

Affidavit necessary—contempt admitted in open court punishable, *State v. Nicoll*



40 W. 517.

Affidavit of facts as published in newspaper insufficient, *State v. Canutt* 26 W. 68.

Affidavit must show that it is in power of party to comply with order, *State ex rel. Olson v. Allen* 14 W. 684. Subsequent dis-

closure that party had power will not make him liable, *id.*

Complaint properly verified is sufficient for the purposes of an affidavit, *State ex rel. Victor Boom Co. v. Peterson* 29 W. 571.

**§7446. Contempt by Person in Custody.** §729.—729. If the party charged be in custody of an officer by virtue of a legal order or process, civil or criminal, except upon a sentence for a felony, an order may be made for the production of such person by the officer having him in custody that he may answer, and he shall thereupon be produced and held until an order be made for his disposal.

Damages may be awarded without right to jury trial, *State v. North Shore Co.* 67 W. 317.

**§7447. State Must Be Made a Party.** §730.—730. In the proceeding for a contempt the state is the plaintiff. In all cases of public interest the proceeding may be prosecuted by the prosecuting attorney on behalf of the state, and in all cases where the proceeding is commenced upon the relation of a private party, such party shall be deemed a co-plaintiff with the state.

Does not limit power of equity court to enforce decrees, *McGill v. McGill*, 67 W. 303. Poland 63 W. 597; applied, *Wright v. Suydam* 79 W. 556.

Contempt for failure to pay alimony properly brought in original case, *Poland v. Poland*, 63 W. 597. Judge is not proper party to contempt proceedings in his own court, *State ex rel. Martin v. Pendergast* 39 W. 132.

**§7448. Warrant—Bail—Custody.** §731.—731. Whenever a warrant of arrest is issued pursuant to this chapter, the court or judicial officer shall direct therein whether the person charged may be let to bail for his appearance upon the warrant, or detained in custody without bail, and if he may be bailed, the amount in which he may be let to bail. Upon executing the warrant of arrest, the sheriff must keep the person in actual custody, bring him before the court or judicial officer and detain him until an order be made in the premises unless the person arrested execute and deliver to the sheriff at any time before the return day of the warrant a bond with two sufficient sureties to the effect, that he will appear on such return day and abide the order or judgment of the court or officer thereupon.

**§7449. Sheriff's Return—Trial.** §732.—732. The sheriff shall return the warrant of arrest and the bond if any, given him by the defendant by the return day therein specified. When the defendant has been brought up or appeared the court or judicial officer shall proceed to investigate the charge by examining such defendant, and witnesses for or against him, for which an adjournment may be had from time to time if necessary.

**§7450. Judgment and Sentence.** §733.—733. Upon the evidence so taken, the court or judicial officer shall determine whether or not the defendant is guilty of the contempt charged; and if it be determined that he is so guilty, shall sentence him to be punished as provided in this chapter.

**§7451. Damages and Costs.** §734.—734. If any loss or injury to a party in an action, suit or proceeding prejudicial to his rights therein, have been caused by the contempt, the court or judicial officer, in addition to the punishment imposed for the contempt, may give judgment that the party aggrieved recover of the defendant a sum of money sufficient to indemnify him, and to satisfy his costs and disbursements, which judgment and the acceptance of the amount thereof, is a bar to any action suit or proceeding by the aggrieved party for such loss or injury.

Dismissal of contempt without prejudice, action for damages sustained, *Matzger v. Arcade B. & R. Co.*, 102 W. 423. Court should award damages in contempt proceeding, *State ex rel. Nicomen Boom Co. v. North Shore etc. Co.* 55 W. 1.

**§7452. Contempt for Refusal to Perform.** §735.—735. When the contempt consists in the omission or refusal to perform an act which is yet in the power of the defendant to perform, he may be imprisoned until he shall have performed it, and in such case the act must be specified in the warrant of commitment.

Service of summons, §8432.

If defendant present in court he may be ordered to pay without citation and may be held for refusal. *In re Cave* 26 W. 212.

**§7453. Indictment Cumulative Remedy. §736.—736.** Persons proceeded against according to the provisions of this chapter are also liable to indictment for the same misconduct, if it be an indictable offense but the court before which a conviction is had on the indictment in passing sentence shall take into consideration the punishment before inflicted.

Criminal contempt §8756.

**§7454. Failure to Appear—Warrant—Action on Bond. §737.—737.** When the warrant of arrest has been returned served, if the defendant do not appear on the return day, the court or judicial officer may issue another warrant of arrest or may order the bond to be prosecuted, or both. If the bond be prosecuted and the aggrieved party join in the action, and the sum specified therein be recovered [so] much thereof [as] will compensate such party for the loss or injury sustained by reason of the misconduct for which the warrant was issued, shall be deemed to be recovered for such party exclusively.

**§7455. Appeal Without Stay—Justices' Courts. §738.—738.** Either party to a judgment in a proceeding for a contempt, may appeal therefrom in a like manner and with like effect as from judgment in an action, but such appeal shall not have the effect to stay the proceedings in any other action, suit or proceeding or upon any judgment, decree or order therein, concerning which or wherein such contempt was committed. Contempts of justices' courts are punishable in the manner specially provided for in the "act relating to justices of the peace and to their practice and jurisdiction."

Supersedeas bond on appeal should be at least in amount of original judgment, State ex Sargent v. Court, 71 W.

Contempt order appealable, Drainage District v. Costello 53 W. 67.

Dismissal of contempt proceedings seeking award of damages appealable, State ex rel. Nicomen Boom Co. v. North Shore etc.

Co. 55 W. 1.

Contempt order is appealable, State ex rel. Olson v. Allen 14 W. 684.

Bond must be given in appeal, State ex rel. Geiger v. Geiger 20 W. 181.

Appellant is entitled to stay, State ex rel. Dunham v. Superior Court 28 W. 590.

## COSTS AND FEES.

Actions to restore lost, etc., records §7787.

Advance of fees required §1612.

Appeal to supreme courts, costs §7329.

Bonding companies and bonds, acts 1903 §493; 1907 §4542; 1911 §3120.

Criminal cases §9202.

Justices of the peace, schedule §9430.

Military court costs §3765-6.

Partition of realty cases §8331.

Supreme court costs §7329.

Tax cases, public officers allowed costs of defense §6988.

Taxation—retaxation (court rules) §8431t.

**§7456. Costs Defined. §505.—505.** The measure and mode of compensation of attorneys and counselors, shall be left to the agreement, expressed or implied, of the parties, but there shall be allowed to the prevailing party upon the judgment certain sums by way of indemnity for his expenses in the action, which allowances are termed costs.

Costs on appeal, §7329.

Where note did not provide for attorney fee, held error to instruct allowance of fee, Scandinavian Am. Bank v. Long 75 W. 270.

Will not aid contract void as against public policy, Delbridge v. Beach, 66 W. 416.

Court may fix attorneys' fees contrary to agreement, §192.

Payment of costs in prior suit before another action not required of poor person, Archbald v. Lincoln County 50 W. 55.

No direct order for payment, costs included in judgment, Howard v. Hanson 49 W. 314.

Cost bond in federal court binding though court had no jurisdiction—judgment for costs, Carrau v. U. S. Fid. & Dep. Co. 47 W. 656.

Party in interest liable for costs as ditch district in appeal in ditch case by county,

Lewis County v. Schobey 31 W. 357.

Champerty not in force in this state—action for damage by must show malice, Smith v. Hogan 35 W. 290.

Cost bill filed before judgment will not be stricken, Kane v. Kane 35 W. 517.

Decree for alimony was made a lien and an attorney's fee of \$100 allowed but not included in lien; held, on foreclosure of lien that only statutory fee would be allowed, Trumble v. Trumble 26 W. 133.

"Costs" used in proper sense, Ebey v. Enger 1 W. T. 72.

Costs need not be stated in the judgment but may be taxed by the clerk, Huntington v. Blakeney 1 W. T. 111.

Trial court may require former judgment for costs on same cause of action to be satisfied, Plumley v. Simpson 31 W. 147.

In absence of agreement as to attorney's fees, §7462 controls, Potwin v. Blasher, 9 W. 460; \$125 attorney's fee against plaintiff on dismissal of suit because he knew



when he instituted suit that some of defendants were infant children is erroneous, *Mason v. McLean* 6 W. 31. Cited 86 W. 669.

Substitute—AN ACT relating to costs in the Superior Court. Approved March 27, 1890. General repeal. Laws '90 p 337.

**§7457. Costs to Prevailing Party.** §1. In any action in the superior court of Washington the prevailing party shall be entitled to his costs and disbursements; but the plaintiff shall in no case be entitled to costs taxed as attorneys' fees in actions within the jurisdictions of a justice of the peace, when commenced in the superior court.

Receiver's expenses in defending actions to set aside conveyances not chargeable in first instance to property, *Smith v. Weed* 75 W. 452.

Petitioner in condemnation though successful on appeal must pay costs, *State ex rel. Clear Lake L. R. Co. v. Superior Court* 83 W. 445.

Costs must be taxed in original action, *Perlus v. Silver* 71 W. 338.

Costs are allowed to the party who has an affirmative judgment on the entire case, *Empire State Co. v. Moran Bros.* 71 W. 171.

Affirmed, *Nowogroski v. Southworth*, 100 W. 336.

Tax foreclosure judgments should not contain personal judgment for costs, *Sound Inv. Co. v. Bellingham Bay L. Co.* 53 W. 470.

Complaint dismissed and defendant's title quieted costs are discretionary, *Loeper v. Loeper* 51 W. 682.

Jury fee deposited and stipulation for waiver of jury held fee taxable as costs, *Lilly v. Lilly Bogardus & Co.* 39 W. 337.

A sued B in district court for amount beyond jurisdiction of justice; B set up counter claim; A recovered amount with-

in jurisdiction of justice; held, that B is entitled to costs against A, *Bagley v. Carpenter* 2 W. 19.

Costs refused prevailing party because necessary tender not kept good, *Fares v. Gleason* 14 W. 657.

Where court erroneously refused plaintiff's right to dismiss defendant not appearing costs should not be taxed to defendant in either court, *Somerville v. Johnson* 3 W. 140.

Costs of granting writ of prohibition against superior court to prevent trial of case taxed against plaintiff, *State v. Sup. Ct.*, 5 W. 518; *State ex rel. Middlebrook v. Reid*, 17 W. 267; *State v. Sup. Ct.*, 15 W. 500.

In condemnation proceedings, see *Owley v. O. R. & N. Co.*, 1 W. 491.

Costs and expenses allowed against husband who dismisses his divorce suit, *Thorndike v. Thorndike* 1 W. T. 175.

Where action dismissed on account of repeal of statute, neither party entitled, *Thurston Co. v. Scammell*, 7 W. 94.

Application for certiorari is "action" within meaning of statute, *Spokane Terminal Co. v. Sup. Ct.*, 40 W. 453. Cited 82 W. 361.

**§7458. When Costs Limited to Ten Dollars.** §508.—508. In an action for an assault and battery, or for false imprisonment, libel, slander, malicious prosecution, criminal conversation or seduction if the plaintiff recover less than ten dollars, he shall be entitled to no more costs or disbursements than the damage recovered.

This section is not repealed by §7457—denial of costs to plaintiff does not give defendant costs, *Meade v. French* 4 W. 11.

**§7459. Costs Chargeable in Only One of Separate Actions.** §509.—509. When several actions are brought on one bond, undertaking, promissory note, bill of exchange, or other instrument in writing, or in any other case for the same cause of action against several parties, who might have been joined as defendants in the same action, no costs or disbursements shall be allowed to the plaintiff in more than one of such actions, which may be at his election, if the parties proceeded against in the other actions were, at the commencement of the previous action, openly within this state.

Does not apply where plaintiff as administratrix has been non-suited in action in her own right, *Archibald v. Lincoln County* 50 W. 55.

**§7460. Defendant Entitled to, If Plaintiff Not** §510.—510. In all cases where costs and disbursements are not allowed to the plaintiff, the defendant shall be entitled to have judgment in his favor for the same.

If plaintiff not entitled to costs defendant shall have judgment for the same, §7460.

The former sections of the code of 1881, which were not expressly repealed, provided as follows:

§506.—506. Costs shall be allowed the party in whose favor the judgment is rendered, except as is otherwise provided by law.

§507.—507. The plaintiff shall not be entitled to costs in actions within the jurisdiction of a justice of the peace, which shall be commenced in the superior court. The amount claimed shall be the test of jurisdiction.

If action dismissed because statute is repealed neither party is entitled to costs, *Thurston County v. Scammell* 7 W. 94. Cited 82 W. 361.

**§7461. Costs to Defendants Answering Separately.** §511.—511. In all actions where there are several defendants not united in interest, and making separate defenses by separate answers, and the plaintiff fails to recover judgment against all, the court may award costs to such defendants as recover judgments in their favor, or either of them.

Costs against plaintiff in action to reform deed where no prior demand for correction, *Seward v. Spurgeon*, 9 W. 74; on

claim secured by lien, see *Frazer v. Ruth*—erford, 26 W. 658. Costs as to parties defending separately, *Gray's Harbor Boom Co. v. McAmant*, 21 W. 465; *Springer v. Ayer*, 50 W. 642.

**§7462. Attorney's Fees as Costs.** §512.—512. When allowed to either party, costs may be called the attorney fee, shall be as follows:

1. In all actions settled before issue is joined, five dollars.
2. In all actions where judgment is rendered without a jury, ten dollars.
3. In all actions where judgment is rendered after impanneling a jury, fifteen dollars.
4. In all actions removed to the supreme court and settled before argument, ten dollars.
5. In all actions where judgment is rendered in the supreme court after argument, fifteen dollars.

Par. 4 is superseded by §7329.

Attorneys' fees in mechanics' lien, §9717.

In special proceedings, no attorney fee provided, only statutory fee as costs allowed, *Gabrielson v. Gorin* 92 W. 408.

Cost bill filed after ten days stricken, *Hayes v. Hutchinson & Shields* 81 W. 394.

Only one attorney's fee in case regardless of number of trials, *Bennett v. Seattle Electric Co.* 56 W. 407.

Defendants appearing separately in behalf of different contracts may each tax attorney's fee, *Wittler-Corbin Mach. Co. v. Martin* 47 W. 123.

More than statutory fee allowed on vacating judgment of dismissal for want of prosecution, *Redding v. Puget Sound I etc. Works* 44 W. 200.

Tender avoids attorney's fees in mechanic's lien *Hughes & Co. v. Flint* 61 W. 460.

Par 5 applies to original actions in supreme court, *State ex rel. Spokane Ter-*

*minal Co. v. Superior Court* 40 W. 453.

Court will take judicial notice of attorney's fees and proof not necessary, *Warnock v. Itawis* 38 W. 144.

Greater fees cannot be allowed, *Criswell v. School District* 34 W. 420.

One hundred dollars attorney's fee in action for breach of covenants of lease is unwarranted, *Spencer v. Commercial Co.* 36 W. 374.

Each defendant appearing separately is entitled to attorney's fee, *Koyukuk Mining Co. v. Van de Vanter* 30 W. 385.

Fee allowed though non-suit granted or verdict is directed, *Kimble v. Kimble* 14 W. 369.

No greater fees as costs can be allowed, *Larson v. Winder* 14 W. 647.

When fee allowed in any form of action statutory fee is not allowed, *Montesano v. Blair* 12 W. 188.

**§7463. Disbursements—Cost Bill.** §513. The prevailing party, in addition to allowance for costs, as provided in the last section, shall also be allowed for all necessary disbursements, including the fees of officers allowed by law, the fees of witnesses, the necessary expenses of taking depositions, by commission or otherwise, and the compensation of referees. The disbursements shall be stated in detail and verified by affidavit, and shall be served on the opposite party or his attorney, and filed with the clerk of the court, within ten days after the judgment: Provided, The clerk of the court shall keep a record of all witnesses in attendance upon any civil action, for whom fees are to be claimed, with the number of days in attendance and their mileage, and no fees or mileage for any witness shall be taxed in the cost bill unless they shall have reported their attendance at the close of each day's session to the clerk in attendance at such trial. L. '05 32.

Amended cost bill in time is good, *Nowogroski v. Southworth*, 100 W. 336.

Jury fee taxable, §8488a.

Schedule of fees all officers, §7477; bill of fees on demand, §7498.

Witnesses must report in criminal cases, §7499.

Witness from another state allowed mileage from state line, *Aldredge v. Oregon-Wash. R. & N. Co.* 79 W. 349.

Railroad brought witnesses free, costs taxed, *Henry v. Chicago, M. & St. P. R. Co.* 84 W. 633.

Mileage allowed witness testifying though he failed to report to clerk, *Pearson*

*v. Gullans* 81 W. 57.

Costs of witnesses allowed though not sworn and testimony inadmissible, *Low v. McDonald* 90 W. 122.

Cost bill filed after ten days stricken, *Clark v. Baker* 76 W. 110.

No costs for service of summons by constable, *Park v. Newell* 87 W. 431.

Premium on surety bond in replevin taxable, *Stilwell v. Union Mach. & S. Co.* 94 W. 61.

Ten days run from filing of judgment, *Thompson v. Seattle Park Co.* 94 W. 539.

Costs may be taxed for mileage and one day's attendance, for witnesses who re-



ported to the clerk on the last day of trial, Daniels v. Spear, 65 W. 121.

All disbursements allowed though subsequently case submitted on agreed statement—objection to costs on appeal, Hamilton v. Witner 50 W. 689.

Interpreter's fees allowed, Hall v. Northwest Lum. Co. 61 W. 351.

Allowed when claimed for first time in cost bill, Hall v. Northwest Lum. Co. 61 W. 351.

Notary's fees not indorsed on deposition taxable. Pillsbury v. Beresford 58 W. 656.

Cost bill stricken if not filed in time except costs on record may be taxed, Matheson v. Ward 24 W. 407.

Copies and service by private citizen of complaint and summons are not chargeable, Creighton v. Cole 10 W. 472.

Cost bill should itemize charge not appearing of record—sheriff's accruing costs need not be included, Potvin v. Blasher 9 W. 460.

In foreclosure of boom lien action is consolidated against several defendants each is entitled to costs—defendants as witnesses entitled to fees, Grays Harbor Boom Co. v. McCammant 21 W. 465.

**§7464. Referees' Fees—Folio Charge.** §514.—514. The fees of referees shall be five dollars to each, for every day necessarily spent in the business of the reference and twenty cents per folio for writing testimony; but the parties may agree in writing upon any rate of compensation, and thereupon such rate shall be allowed.

Referee can not increase fees by employing stenographer, Park v. Mighell 3 W. 737.

**§7465. Referees' Continuance—Terms.** §515.—515. When an application shall be made to a court or referees to postpone a trial, the payment to the adverse party of a sum not exceeding ten dollars, besides the fees of witnesses, may be imposed as the condition of granting the postponement.

Lump sum as condition of continuance sustained, Casady v. Anderson 90 W. 296. Trustee Co., 67 W. 537.

Fees of a witness not subpoenaed may be taxed as costs, Hofstetter v. Sound Court can not impose other costs, Tacoma Nat. Bank v. Peet 9 W. 222.

**§7466. Tender Avoids Costs.** §516.—516. When in an action for the recovery of money, the defendant alleges in his answer, that before the commencement of the action, he tendered to the plaintiff the full amount to which he is entitled, in such money as by agreement ought to be tendered, and thereupon brings into court for the plaintiff, the amount tendered, and the allegation be found true, the plaintiff shall not recover costs, but shall pay them to the defendant.

Tender of judgment in justices' court, include counter claim of larger amount, Le Rault v. Palmer 51 W. 664.

Refusal of tender is a waiver of the same, Walsh v. Calvin 53 W. 309.

Willingness to pay may be sufficient tender in equity, Murray v. O'Brien 56 W. 361.

Tender of amount admitted does not pre-

**§7467. Deposit Avoids Costs.** §517.—517. If the defendant in any action pending, shall at any time deposit with the clerk of the court, for the plaintiff, the amount which he admits to be due, together with all costs that have accrued, and notify the plaintiff thereof, and such plaintiff shall refuse to accept the same in discharge of the action, and shall not afterwards recover a larger amount than that deposited with the clerk; exclusive of interest and cost, he shall pay all costs that may accrue from the time such money was so deposited.

Tender to avoid costs admits amount due, Sanborn v. Dentler, 97 W. 149.

Deposit by intervener, costs belong to him, Lazier v. Cady, 44 W. 339.

**§7468. Appellant From Justice's Judgment.** §518.—518. In all civil actions tried before a justice of the peace, in which an appeal shall be taken

to the superior court, and the party appellant shall not recover a more favorable judgment in the superior court than before the justice of the peace, such appellant shall pay all costs.

"More favorable" means substantially more favorable, *Baxter v. Scoland* 2 W. T. 86.

**§7469. Guardian of Infant Liable. §519.—519.** When costs are adjudged against an infant plaintiff, the guardian or person by whom he appeared in the action, shall be responsible therefor, and payment may be enforced by execution.

**§7470. Fiduciary Not Liable. §520.—520.** In action prosecuted or defended by an executor, administrator, trustee of an express trust, or a person expressly authorized by statute, costs shall be recovered as in an action by or against a person prosecuting in his own right, but such costs shall be chargeable only upon or collected of the estate of the party represented, unless the court shall direct the same to be paid by the plaintiff or defendant personally, for mismanagement or bad faith in such action or defense.

Costs incurred by beneficiaries of will not chargeable to the estate, *In re Lotzgesell's Estate*, 62 W. 352.

**§7471. Costs, Novation in Action. §521.—521.** When the cause of action after the commencement of the action, by assignment, or in any other manner, becomes the property of a person not a party thereto, and the prosecution or defense is thereafter continued, such person shall be liable to the costs in the same manner as if he were a party, and payment thereof may be enforced by execution.

**§7472. State and County Liable. §522.—522.** In all actions prosecuted in the name and for the use of the state, or in the name and for the use of any county, the state or county shall be liable for costs in the same case and to the same extent as private parties.

Does not authorize costs in proceedings *County v. Magnuson*, 70 W. 639.  
respecting delinquent children, *Pierce County* shall pay in criminal cases, §9203

**§7473. Costs in Special Proceedings. §523.—523.** When the decision of a court of inferior jurisdiction in an action or special proceeding is brought before the supreme court or a superior court for review, such proceedings shall, for purpose of costs, be deemed an action at issue upon a question of law from the time the same is brought into the supreme court or superior court, and costs thereon may be awarded and collected in such manner as the court shall direct, according to the nature of the case.

Costs in mandamus, §8198; on appeal, 19 W. 333.

§7329.

On reversal of disbarment proceedings, costs in lower court are not provided costs taxed against state, *State ex rel. Dill* for, are not taxable, *Bringgold v. Spokane* *v. Martin* 45 W. 76.

**§7474. Cases Not Provided For. §525.—525.** In all actions and proceedings other than those mentioned in this chapter, where no provision is made for the recovery of costs, they may be allowed or not, and if allowed may be apportioned between the parties, in the discretion of the court.

Costs of objectors to sewer assessment of tender deposited in court, *Kruegel v. Brown v. Ana-Kitchen*, 33 W. 214.  
in discretion of the court, *Brown v. Ana-cortes* 79 W. 33.

In equity court may apportion costs, should be apportioned, *Strunz v. Hood*, 41 *Churchill v. Stephenson* 14 W. 620. W. 99.

Equity court may order costs paid out

**§7475. Retaxation of Costs. §526.—526.** Any party aggrieved by the taxation of costs by the clerk of the court may, upon application, have the same retaxed by the court in which the action or proceeding is had.

Costs—retaxation (court rules) §8431t.

Cannot be retaxed in appellate court unless motion therefor in trial court, *Burrichter v. Cline*, 3 W. 135; *Jenkins v. Powe*, 19 W. 113; *Bringgold v. Spokane*, id. 333; see *Port Townsend v. Lewis*, 34 W. 413.

Where only error in magistrate's criminal judgment is in taxation of costs, superior court should retax costs and affirm judgment, *State v. White*, 8 W. 230.

To retax costs in refusing to vacate judgment is error, *Tacoma, etc., Co. v. Wolff*, 7 W. 478.

**§7476. Plaintiff Outside of County Must Give Security. §527.—527.** When a plaintiff in an action resides out of the county, or is a foreign corporation, security for the costs and charges which may be awarded against such



plaintiff may be required by the defendant. When required, all proceedings in the actions shall be stayed until a bond, executed by two or more persons, be filed with the clerk, conditioned that they will pay such costs and charges as may be awarded against the plaintiff by judgment or in the progress of the action, not exceeding the sum of two hundred dollars. A new or additional bond may be ordered by the court or judge; upon proof that the original bond is insufficient security, and proceedings in the action stayed until such new or additional bond be executed and filed. The plaintiff may deposit with the clerk the sum of two hundred dollars in lieu of a bond.

Surety on cost bond must be served with notice of appeal, Shippen v. Shippen 91 W. 610. Residence in county is not required if surety on cost bond—need not justify as to separate property in first instance, Brooks v. James 16 W. 335.

Bond not released by reversal of plaintiff's judgment by supreme court—does not cover costs on appeal, State ex rel. Illinois Surety Co. v. Superior Court 82 W. 361. Bond not required of non-resident defendant asking affirmative relief, State ex rel. Hanna v. Superior Court 17 W. 564.

Applies to sureties and amount of bond—dismissal, Morris v. Warwick 48 W. 426. Only one bond required for several defendants, Robinson v. Haller 8 W. 309. Judgment cannot be had against sureties in same action in which bond given, O'Connor v. Lighthizer 34 W. 152. Plaintiff may dismiss after demand for bond without giving it—plaintiff had deposited costs, Dane v. Daniel 28 W. 155.

Delay in giving bond held immaterial, Johnston v. Gerry 34 W. 524. Demand for bond must be timely, Swift v. Stine 3 W. 518.

Judgment cannot be entered against sureties in same case, Trumbull v. Jefferson County 37 W. 604. Action may be dismissed if cost bond not given, Carlson Bros. & Co. v. Van De Vanter 19 W. 32.

## COSTS, ETC.—SCHEDULES OF FEES

Registration of land titles §5826.

**AN ACT** in relation to the fees of state and county officers, witnesses and jurors, and repealing an act entitled "An act in relation to the fees of state and county officers, witnesses and jurors, and repealing an act entitled 'An act in relation to the fees of state and county officers, witnesses and jurors, and amending section 2086 of the Code of Washington of 1881,' same being approved March 15, 1893," approved March 16, 1903. Approved March 2 1907. Laws '07 p 88.

**§7477. Fees—Clerk Supreme Court.** §1. The several officers herein named shall collect the fees herein prescribed for their official services:

Upon filing his first paper or record and making an appearance in the Supreme Court, the appellant shall pay to the clerk of said court a docket fee of \$5.00.

Upon making his appearance in the Supreme Court, the respondent in any appealed case shall pay to the clerk a fee of \$2.00.

The applicant or petitioner in any special proceeding in the Supreme Court, upon making his appearance, shall pay to the clerk thereof a fee of \$3.00.

The respondent in a special proceeding, and each respondent appearing separately therein, at the time of his appearance, shall pay to the clerk a fee of \$1.00.

The foregoing fees shall be all the fees connected with the appeal or special proceeding: Provided, That no fees shall be required to be advanced by the state, or any municipal corporation, or any public officer prosecuting or defending on behalf of such state or municipal corporation.

For filing application, entering admission and issuing certificate to an attorney upon admission to practice \$20.00.

For all services for which no fee is hereinbefore prescribed, the Clerk of the Supreme Court shall receive the same fees as are prescribed for clerks of the superior courts for like services.

Fees in proportion to valuation of estate in probate is property tax and invalid—act embraces more than one subject, State ex rel. Nettleton v. Case 39 W. 117.

Clerk of superior court has not authority to examine accounts of guardians of insane and charge therefor Denny v. Holway 17 W. 487.

Sheriff not entitled to commissions in mortgage sales when mortgagee is purchaser and no money passes, State ex rel. Thompson v. Prince 9 W. 107; so in the case of purchase by any execution creditor, State ex rel. Cannon v. Pugh 9 W. 694.

Under practice of the court excusing

jurors from Friday until Monday they can not collect fees for Saturday, State ex rel. Hastie v. Lamping 25 W. 278.

Witnesses do not have to prove attendance in civil cases, Kimble v. Kimble 14 W. 369.

Sheriff can not file cost bill but must collect from the parties, Howard v. Gemming 10 W. 1.

First mortgage is prior to costs on fore-

closure of second mortgage, id.

Sheriff is not entitled to commission in mortgage foreclosure when property bld in for debt—fees paid in may be recovered by judgment debtor, Soderberg v. King County 15 W. 194.

United States marshal entitled to percentage as on sheriff's sales, Dexter Horton & Co. v. Sayward 78 Fed. Rep. 275.

Cited 79 W. 227.

**§7478. — Clerks Superior Courts.** Clerks of the Superior Court.—The plaintiff, or other party instituting any civil action or proceedings, shall pay, when the case is entered in the court or when the first paper on his part is filed therein, a fee of \$4.00.

The defendant or other adverse party or any one or more of several defendants or other adverse parties, or intervenors, appearing separately from the others, shall pay when his or their appearance is entered in the case, or when his or their first appearance is filed therein, a fee of \$2.00.

When no issue of fact is joined in the case and no judgment other than a dismissal or discontinuance, without trial of an issue of fact is rendered, no further fee need be paid.

Where, after an issue of fact has been joined, the cause is dismissed or discontinued without trial of such issue, the party causing such dismissal or discontinuance to be entered shall pay, at the time of the entry thereof, a further fee of \$1.00.

If a judgment other than a dismissal or discontinuance is rendered, the party obtaining the same shall pay, at the time of the entry thereof, a further fee as follows:

1. Where the judgment is rendered without the taking of proof of any fact pleaded

(a) If no adverse party has appeared in the case. \$2.00.

(b) Or if an adverse party has appeared \$3.00.

2. Where the judgment is rendered upon proof taken, but without the assessment of damages by a jury, and in a case other than the foreclosure of a lien or mortgage or partition of real estate

(a) If no adverse party has appeared in the case \$3.00.

(b) If an adverse party has appeared \$5.00.

3. Where the judgment is rendered upon an assessment of damages by a jury, no adverse party having appeared in the case. \$5.00.

4. Where the judgment is rendered after an appearance by an adverse party, and a trial by jury, or by the court or a judge, referee or commissioner, in a cause other than the foreclosure of a lien or mortgage, or partition of real estate \$6.00.

5. Where the judgment is rendered in an action for the foreclosure of a lien or mortgage or partition of real estate—

(a) If no adverse party has appeared in the case \$6.00.

(b) If an adverse party has appeared \$8.00.

6. For making a transcript on appeal to the Supreme Court, or for transcribing the records in any action for any other purpose, 10 cents per folio.

7. For comparing a transcript on appeal, or transcript of the record in any action where the party has prepared it himself, 5 cents per folio.

The appellant in appeals from judgments of a justice of the peace, shall at the time of docketing his appeal, pay a docket fee of \$4.00.

The adverse party in appeals from judgment of a justice of the peace at the time of his appearance in the superior court shall pay a fee of \$2.00.

Other fees shall be charged as are charged in actions originally begun in the superior court.

For filing an abstract of a judgment entered in the Supreme Court or of any other superior court of the State or of any United States court held in this State, or a transcript of a judgment of a justice court, a fee of \$1.00.

For taking an affidavit with or without seal 50 cents.

For certificate with or without seal, 50 cents.

For entering a declaration to become a citizen of the United States, \$1.50.



For entering the final admission of an alien to citizenship and for a certified copy thereof under seal \$3.00.

For filing all instruments required by law to be filed in his office, where no other fee is provided, 10 cents.

For filing and recording marriage certificates, the same to be collected as provided by law \$1.00.

For approving bond, including justification thereon, in other than civil actions and probate proceedings 50 cents.

In probate proceedings the party instituting such proceedings shall pay, at the time of the filing of the first paper therein, a fee of \$5.00.

Upon the filing of a petition for the sale of real estate, there shall be paid at the time of filing such petition a fee of \$3.00.

Upon the filing of a final account in the settlement of the decedent's estate, there shall be paid a fee of five dollars.

For issuing commission to take deposition, there shall be paid a fee of \$1.00.

For filing any petition to contest a will admitted to probate, or to prove a will which has been rejected and for all other services in connection with such petition, subsequent to its filing and up to final settlement of the issues raised by such petition, to be paid at the time of filing such petition, a fee of \$25.00.

Naturalization fees to be charged as tencourt v. Gordon 8 W. 488.

fixed by U. S. laws, State ex rel. Newman v. Libby 47 W. 481.

Garnishment is auxillary and four dollar filing fee can not be charged, Kelly v. Ryan 8 W. 536.

Four dollar filing fee can not be charged for justice's transcript, State ex rel. Bit-

Jury fee provided by Laws '56-7 p 20 §7 are not chargeable—act held to be complete in itself, Nelson v. Nelson Bennett Co. 31 W. 116.

Fees do not pay for revival of judgment, State ex rel. Quincy v. Collins 31 W. 564.

**§7479. — Sheriffs. Sheriff's Fees.** For service of each summons and complaint, and return thereon, on each defendant, besides mileage 60 cents.

For making a return of not found in the county upon a summons, besides mileage actually traveled 30 cents.

For levying each writ of attachment or writ of execution upon real or personal property, besides mileage 60 cents.

For serving writ of possession or restitution without aid of the county, besides mileage \$1.50.

For serving writ of possession or restitution, with aid of the county, besides mileage \$2.00.

For service and return or subpoena, upon each person served, besides mileage 25 cents.

For summoning each juror, in a justice of the peace court, besides mileage 25 cents.

For serving an arrest warrant in a civil action or proceeding, besides mileage 80 cents.

For serving or executing any other writ or process in a civil action or proceeding, besides mileage 60 cents.

For taking and approving any bond, in a civil action or proceeding, required by law to be taken or approved by him, except indemnity bonds 50 cents.

For posting each notice, besides mileage 25 cents.

For each mile actually and necessarily traveled by him in going to or returning from any place of service, 10 cents.

For making a deed to lands sold upon execution or order of sale, or other decree of court, to be paid by the purchaser \$3.00.

For making copy of any complaint, notice, writ or process, necessary to complete service, per folio 10 cents;

Provided, that he shall not be required to make any certified copies for a fee of less than \$1.00.

**§7480. — Constable. Constable's Fees.** For serving any arrest warrant in a criminal action, or making an arrest in cases where an arrest may be lawfully made without a warrant, besides mileage \$2.00.

For other services he shall receive the same fees and mileage as is paid to a sheriff for like services.

**§7481. — County Auditors.** County Auditors. For filing each instrument, when filed for recording, 10 cents.

For filing each instrument other than for recording (except chattel mortgages and conditional sale contracts), 25 cents.

For filing each chattel mortgage and conditional sale contract and entering same as required by law, 50 cents.

For indexing each instrument, except chattel mortgages and conditional sale contracts, for the first two names 5 cents.

For each additional name 5 cents.

For a marginal release of mortgage or lien 25 cents.

For release of chattel mortgage or conditional sale contract 25 cents.

Making certified copy of instrument besides certificate and seal, per folio 10 cents.

For comparing instrument prepared by another, besides certificate and seal, per folio 5 cents.

For certificate and seal 50 cents.

For recording each instrument, per folio 15 cents.

For administering an oath or taking an affidavit with or without seal 50 cents.

For issuing miscellaneous license and entering of record \$1.00.

For issuing marriage license, including fee of \$1.00 for county clerk \$3.00.

For recording plats, 25 cents for each lot, except for cemetery plats, 10 cents for each lot, and one dollar for each acknowledgment, dedication or description, with a minimum fee of one dollar for each plat.

For searching records per hour \$1.00.

For filing, recording and indexing cattle brands and marks, for each mark and brand described \$1.00.

For filing, recording and indexing brands of loggers, for each brand described \$1.00.

For filing and recording statement and oath in regard to sires under [§9729] section 3442 of Ballinger's Codes and Statutes of the State of Washington, the same fees per folio, as are paid for other instruments.

For each certificate issued under the provisions of [§9730] section 3443 of said Ballinger's Codes and Statutes of the State of Washington, in regard to sires, 50 cents.

For sealing weights and measures, for each weight and measure sealed 10 cents.

**§7482. — Coroners.** Coroners. For each inquest held, besides mileage \$10.00.

For issuing a venire \$1.00.

For drawing all necessary writings, per folio 10 cents.

For mileage each way, per mile 10 cents.

For performing the duties of a sheriff, he shall receive the same fees as a sheriff would receive for the same service.

**§7483. — Jurors.** Jurors. Each grand and petit juror shall receive for each day's attendance upon the superior court, besides mileage \$3.00.

Each talesman serving in the superior court, per day \$2.00.

For each day's attendance upon a justice of the peace court, \$1.00.

For serving on a coroner's jury, per day \$2.00.

Mileage, each way, per mile 10 cents.

**§7484. — Witnesses.** Witnesses. Witnesses shall receive for each day's attendance in all courts of this State besides mileage at ten cents per mile each way \$2.00.

**§7485. — Secretary of State.** Fees of Secretary of State.

1. For a copy of any law, resolution, record or other document or paper on file in his office, fifteen cents per folio; Provided, no copy shall be furnished by the Secretary of State unless under the seal of the State.

2. For any certificate under seal of State, \$2.00.

3. For recording articles of incorporation, 15 cents per folio.

4. For filing and recording trade mark, \$5.00.

5. For each deed or patent of land issued by the Governor, if for one



hundred and sixty acres of land, or less, one dollar, and for each additional one hundred and sixty acres, or fraction thereof, one dollar.

6. For recording miscellaneous records, papers or other documents, ten cents per folio, and five dollars for filing each case. But no member of the Legislature, State officer, Judge of the Supreme Court or superior courts, shall be charged for any search relative to matters pertaining to the duties of their offices; nor must they be charged for a certified copy of any law or resolution passed by the Legislature relative to their official duties: Provided, Such law has not been published as a State law. All fees herein enumerated must be collected in advance.

**§7486. — Notaries Public.** Notaries Public. 1. Protest of a bill of exchange or promissory note \$1.00.

2. Attesting any instrument of writing with or without seal 50 cents.

3. Taking acknowledgment, two persons, with seal 50 cents.

4. Taking acknowledgement, each person over two 25 cents.

5. Certifying affidavit, with or without seal 50 cents.

6. Registering protest of bill of exchange or promissory note for nonacceptance or nonpayment 50 cents.

7. Being present at demand, tender or deposit, and noting the same, besides mileage at the rate of ten cents per mile 50 cents.

8. Noting a bill of exchange or promissory note, for nonacceptance or nonpayment 50 cents.

9. For copying any instrument or record, besides certificate and seal per folio 15 cents.

**§7487. Fees to Be Paid In.** All officers enumerated in this section, who are paid a salary in lieu of fees, shall collect the fees herein prescribed for the use of the State or county, as the case may be, and shall pay the same into the State or county treasury, as the case may be, on the first Monday of each month.

**AN ACT to regulate fees and costs.** Approved December 7, 1881, C. 81. §§2086-2102.

**§7488. Taking Illegal Fees.** §2090.—5. If any officer shall take more or greater fees than are herein allowed, he shall be liable to indictment, and on conviction, shall be removed from office and fined in any sum not exceeding one thousand dollars.

**§7489. Schedule to Be Posted.** §2091.—6. Every officer whose fees are as ascertained and fixed by this act, shall publish and set up in his office a table of the fees allowed him according to this act, within one month after its passage, in some conspicuous place, for the inspection of all who have business in his office, upon pain of forfeiture, for each day of his omission so to do, a sum not exceeding twenty dollars, which may be recovered by any person by action before any justice of the peace, of the same county, with costs.

**§7490. Fees for Publication in Advance.** §2092.—7. When, by law, any publication, is required to be made, by an officer of any suit, process, notice, order or other papers, the costs of such publication shall, if demanded, be tendered by the party procuring such publication before such officer, shall be compelled to make publication thereof.

**§7491. Folio Defined.** §2093.—8. The term "folio" when used as a measure for computing fees or compensation, shall be construed to mean one hundred words, counting every two figures necessarily used as a word. Any portion of a folio, when in the whole draft or paper there should not be a complete folio, and when there shall be an excess over the last folio, exceeding a quarter, it shall be computed as a folio. The filing of a paper shall be construed to include the certificate of the same.

**§7492. Two Services on Same Trip.** §2094.—9. When any sheriff, constable or coroner, serves more than one process in the same cause or on the same person, not requiring more than one journey from his office, he shall receive mileage, only for the most distant service.

**§7493. Attorney in Case Not Allowed Witness Fees.** §2095.—10. No attorney in any case shall be allowed any fees as a witness in such case.

§7494. **No Fee for Oath of Office.** §2096.—11. No fees shall be charged by any officer for administering and certifying the oath of office.

§7495. **Fees Not Provided For.** §2098.—13. Each and every officer who shall be called on, or required to perform service for which no fees, or compensation are provided for in this act, shall be allowed fees similar and equal to those allowed him for services of the same kind for which allowance is made herein.

§7496. **Fees in Advance.** §2099.—14. All fees are invariably due in advance, where demanded by the officer required to perform any official act, and no officer shall be required to perform any official act, unless his fees are paid when he demands the same: Provided, This section shall not apply when the officers perform any official act for his county or the state.

Sheriff must demand fees or perform service without them *Haas v. Gaddis* 1 W. 89.

§7497. **Witness Fees in Advance.** §2100.—15. Witnesses in civil cases shall be entitled to receive, upon demand, their fees for one day's attendance, together with mileage going to the place where they are required to attend, if such demand is made to the officer or person, serving subpoena, at the time of service.

Costs and fees in criminal cases, §9203; witnesses and jurors to report, §7499.

Demand and payment of fees, §7798.

§7498. **Officer's Bill of Fees.** §2102.—17. All officers shall, when requested so to do, make out a bill of their fees in every case, and for any services specifying each particular item thereof, and receipt the same when it is paid, which bill of fees shall always be subject to examination and correction by the several courts; and any officer who refuses or declines to comply with the requirements of this section shall forfeit his fees in every case.

**Supplementary—AN ACT to govern the method of allowance to witnesses and jurors of fees for their attendance and mileage.** Approved February 26, 1895. Laws '95 p 15.

§7499. **Witnesses in Criminal Cases Must Report.** §1. No fees shall be allowed to witnesses in criminal causes, unless they shall have reported their attendance at the close of each day's session to the clerk in attendance thereon.

Must report in civil cases, §7463.

§7499a. **Claim for Mileage Must Be Verified.** §2. No allowance of mileage shall be made to a juror or witness who has not verified his claim of mileage under oath before the clerk of the court, on which he is in attendance.

**AN ACT relating to the payment of witness fees to public officers.** Approved March 16, 1901. Laws '01 p 212.

§7500. **Salaried Officers—No Fees.** §1. That no state, county, municipal or other public officer within the State of Washington, who receives from the state, or from any county or municipality therein, a fixed and stated salary as compensation for services rendered as such public officer, shall be allowed or paid any per diem for attending or testifying on behalf of the state of Washington, or any county, or municipality therein, at any trial or other judicial proceeding, in any state, county or municipal court within this state; nor shall such officer, in any case, be allowed nor paid any per diem, for attending or testifying in any state or municipal court of this state, in regard to matters and information that have come to his knowledge in connection with and as a result of the performance of his duties as a public officer as aforesaid: Provided, This act shall not apply when any deduction shall be made from the regular salary of such officer by reason of his being in attendance upon the Superior Court, but in such cases regular witness fees shall be paid; and further that if a public officer be subpoenaed and required to appear or testify in judicial proceeding in a county other than that in which he resides, then said public officer shall be entitled to receive per diem and mileage as provided by statute in other cases; and provided further



that this act shall not apply to police officers when called as witnesses in the superior courts during hours when they are off duty as such officers. L. '03 10.

## DIVORCE.

Crime to advertise for business §9023.

Rules of court §8431d.

**AN ACT to regulate suits for divorce and alimony.** Approved December 1, 1881. General Repeal. C81 §§2000-13.

FORMER LAWS, '54 p 405; '56-7 p 25; '63-4 p 13; '65-6 p 89; '85-6 pp 54 120. '59-60 p 318; '60-61 pp 20 26; '62-3 p 413;

**§7501. Grounds for Divorce.** §2000. Divorces may be granted by the superior court on application of the party injured, for the following causes:

1. When the consent to the marriage of the party applying for the divorce was obtained by force or fraud, and there has been no subsequent voluntary cohabitation.

2. For adultery on the part of the wife or of the husband, when unforgiven, and the application is made within one year after it shall have come to the knowledge of the party applying for a divorce.

3. Impotency.

4. Abandonment for one year.

5. Cruel treatment of either party by the other, or personal indignities rendering life burdensome.

6. Habitual drunkenness of either party, or the neglect or refusal of the husband to make suitable provisions for his family.

7. The imprisonment of either party in a state penal institution if complaint is filed during the term of such imprisonment: and a divorce may be granted upon application of either party for any other cause deemed by the court sufficient, and the court shall be satisfied that the parties can no longer live together.

8. Where the parties are estranged and have lived separate and apart for eight years or more and the court shall be satisfied that the parties can no longer live together.

9. In case of incurable chronic mania or dementia of either party, having existed for ten years or more, the court may, at its discretion, grant a divorce. L. '17 353, R.&B. §982.

Refusal of sexual intercourse for 12 years is ground for divorce, Nordlund v. Nordlund, 97 W. 475.

Wife granted divorce because husband relatively more cruel, Stolz v. Stolz, 96 W. 227.

Indifference and aversion ground for divorce, Sabot v. Sabot, 97 W. 395.

Divorce for nonsupport on the facts, Snyder v. Snyder, 95 W. 619.

Decree granted husband on his cross-complaint for misconduct of wife—copies of letters in evidence, Glenn v. Glenn 84 W. 215.

Both at fault, divorce granted—division of property and support in discretion of trial court, Schirmer v. Schirmer 84 W. 1.

Divorce refused, husband at fault though wife lived apart, Maloney v. Maloney 83 W. 656.

Causes subsequent to marriage only, grounds for divorce—incompatibility prior to marriage not a ground, Turner v. Turner 82 W. 518.

Keeper of sanitarium drugged patient and married him, divorce granted—costs, Waushop v. Waushop 82 W. 69.

Offense of criminal intimacy condoned, Rogers v. Rogers 81 W. 502.

Divorce refused, another action and trial should be confined to conduct since former trial, Averbuch v. Averbuch 80 W.

257.

Offer to make amends after suit no defense—case reopened and court refused to receive evidence in control of party before case reopened, Egbers v. Egbers 79 W. 72.

Cruelty—both at fault—decree to husband—property to wife reduced, Johnsen v. Johnsen 78 W. 423.

Both parties charge cruelty, neither proving it. Decree granted as serving the "ends and objects of society" will be reversed, Ellis v. Ellis 77 W. 247.

Both at fault but husband first in point of time, findings for wife sustained, Hilleware v. Hilleware 92 W. 99.

Husband's cross-complaint for divorce, in wife's suit for maintenance, should be heard, Hawley v. Hawley 91 W. 646.

Duty of husband to support wife is not excused if wife able to support herself, Merriam v. Merriam 75 W. 389.

That husband and wife can no longer live together applied to the facts and divorce granted, Spute v. Spute 74 W. 665.

Does not authorize a divorce merely because the parties will never live together or adjust their differences, especially when one of them offers so to do, Pierce v. Pierce, 68 W. 415.

Cruelty by husband in placing wife in charity hospital at childbirth, Gould v. Gould, 63 W. 484.

Wife entitled to divorce where, without fault on her part, nonsupport has continued long enough to show intention to refuse to support, three months being sufficient. *Garland v. Garland*, 66 W. 226.

"Cause deemed by the court sufficient," held insufficient, *Bickford v. Bickford* 57 W. 639.

Second action must show that wife at-

48 W. 124.

Under subd. 7 "other cause" must be alleged, *Wheeler v. Wheeler* 38 W. 491.

Husband abandoned wife and sued wife's cross bill granted, *Clemons v. Western* 39 W. 290.

Findings of cruelty held to justify decree, *Mitchell v. Mitchell* 39 W. 431.

Husband granted divorce for cruel treatment of property.

**§7501. Grounds for Divorce.** §2000. Divorces may be granted by the superior court on application of the party injured, for the following causes:

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8. A divorce may be granted to either or both of the parties in all

*Meisenheimer* 55 W. 32.

Threats of husband to commit suicide prevented wife's defense, decree vacated for fraud, *Graham v. Graham* 54 W. 70.

Three grounds in one paragraph sustained—personal indignities, non-support and habitual drunkenness sustained, *Page v. Page* 43 W. 293.

Wife inveigled husband into marriage relation both had property—divorce allowed husband—wife's allowance set aside—costs in discretion, *Van Gelder v. Van Gelder* 61 W. 146.

Turmoil and charges of infidelity by husband cause for divorce—all of property to wife, *Markowski v. Markowski* 44 W. 594.

Where case is clearly within the statute there is no discretion divorce must be granted, *Swain v. Swain* 45 W. 184; *id.* 296.

Sustained on ground of cruelty—custody of child and alimony, *Guerin v. Guerin* 45 W. 486.

Separate maintenance decreed on the facts, *Bond v. Bond* 45 W. 511.

Non-support by husband brought case within statute, held divorce must be granted, *Siegmund v. Siegmund* 46 W. 572.

Annulment for former marriage—disposal of property—divorce in another state, *Buckley v. Buckley* 50 W. 213.

Divorce for cruelty and personal indignities sustained—source of property not material in division—attorney's fees—costs and rents pending appeal, *Sullivan v. Sullivan* 52 W. 160.

Delinquencies of wife before divorce can not be shown to modify decree as to children, *Pierce v. Pierce* 52 W. 679.

When conditional condonation breach works revival of offense, *Cozard v. Cozard*

plead resulting cruelty, especially if no is the cause, *id.*

Wife's lack of interest in husband's affairs, refusal to enter into his mode of life, being moody, whimsical, etc., is not cruelty, *Branscheid v. Branscheid* 27 W. 368.

Action for separate maintenance may be maintained after abandonment and within one year—facts held not sufficient to give relief, *Schonborn v. Schonborn* 27 W. 421.

Compelling wife to submit to sexual intercourse while pregnant is cruelty and is established by testimony of wife and corroborating circumstances, *McAllister v. McAllister* 28 W. 613.

Where there are no other facts than that parties will not live together divorce should be refused, *McDougall v. McDougall* 5 W. 802.

Cruelty occurring subsequent to complaint should be alleged by supplemental complaint—cruelty in charging wife with adultery is not justified by her receiving visits of another man, *Scoland v. Scoland* 4 W. 118.

Refusal of divorce to wife for cruelty of husband in charging unchastity sustained, *Blurlock v. Blurlock* 4 W. 495.

Divorce granted wife for cruelty—pleading adultery—cohabitation after action, *Denison v. Denison* 4 W. 705.

Divorce to wife for cruelty—all facts do not have to be corroborated—pleading, *Lee v. Lee* 3 W. 236.

Making chronic mania or dementia ground was within power of territorial legislature, *Hickman v. Hickman* 1 W. 257.

Wife abandoned may sue for maintenance at any time without divorce, *Kimble v. Kimble* 17 W. 75.

Abusive language when both parties culpable is not cruelty, *Luce v. Luce* 15 W. 608.



Proof of marriage in civil cases—foreign contract marriage where such is held void, *Summerville v. Summerville* 31 W. 411. Oregon territory had power to grant divorce—powers of legislature construed, *Maynard v. Valentine* 2 W. T. 3.

Act '63 forbidding reversal of decree is invalid 1 W. T. 569. Allowance of divorce for chronic dementia is valid, *Hickman v. Hickman* 1 W. 257.

**§7502. Doubtful Marriage.** §2001. When there is any doubt as to the facts rendering a marriage void, either party may apply for, and on proof obtain a decree of nullity of marriage. L. '91, 42.

Ceremonial marriage by holding out as wife, *Potts v. Potts* 81 W. 27. *Cushman v. Cushman* 80 W. 615.

Marriage by males over 14 and females over 12 when consummated held valid, *Sortore v. Sortore*, 70 W. 410. Plaintiff may have a marriage annulled on the ground of her own incapacity, *Sortore v. Sortore*, 70 W. 410.

**§7503. One Year's Residence.** §2002.—3. Any person who has been a resident of the State for one year may file his or her complaint for a divorce or decree of nullity of marriage under oath in the superior court of the county where he or she may reside, and like proceedings shall be had thereon as in civil cases.

Change of residence pending trial will not defeat action, *Hill v. Hill* 87 W. 150. venue, *Pfueller v. Superior Court* 14 W. 115.

Cross-complaint need not show year's residence—particulars of adultery, *Powell v. Powell*, 66 W. 561. Complaint may be verified on information and belief, *Burdick v. Burdick* 7 W. 533.

Suit for maintenance before one year—alimony, *State ex rel. Lloyd v. Superior Court* 55 W. 347. If husband has necessary residence wife has for the purpose of bringing action though she has not one year residence, *Prouty v. Prouty* 4 W. 174.

Husband and wife both sued and stipulated that the actions be tried together—wife not in state year—but filed cross-complaint after a year, held good, *Kane v. Kane* 35 W. 517. Failure to grant change of venue to county of defendants is not error, *Bachelor v. Bachelor* 30 W. 639.

Without necessary residence court is without jurisdiction, *Van Alstine v. Van Alstine* 23 W. 310. Residence must be shown conclusively, *Luce v. Luce* 15 W. 608.

Defendant can not have change of venue, *Summerville v. Summerville* 31 W. 411. Absence from the state held not to defeat residence.

**§7504. Proofs Shall Be Taken.** §2003.—4. When the defendant does not answer, or answering, admits the allegations in the complaint, the court shall require proof before granting a divorce or decree of nullity.

**§7505. Divorce to Either Party.** §2004.—5. The defendant may, in addition to his or her answer, file a cross complaint for divorce, and the court may in such case grant a divorce, if any, in favor of either party or as an application of both.

Cross-complainant obtaining decree can not set aside decree after three years because of want of residence of plaintiff nor on the ground of fraud because complaint alleged property to be one-half its actual value, *Ferry v. Ferry* 9 W. 239. Residence of divorced husband is not residence of the wife under donation law, *Mayland v. Hill* 2 W. T. 321.

**§7506. When Both Parties Deemed Applying.** §2005. Both parties shall be considered as applying for a divorce when the complaints of both are filed in the same action, and when the defendant, by his or her cross-complaint, also applies for a divorce. L. '91 42.

**§7507. Interlocutory Orders.** §2006. Pending the action for divorce, the court, or judge thereof, may make, and by attachment enforce, such orders for the disposition of the persons, property, and children of the parties as may be deemed right and proper, and such orders relative to the expenses of such action as will insure to the wife an efficient preparation of her case, and a fair and impartial trial thereof; and on decreeing or refusing to decree a divorce, the court may, in its discretion, require the husband to pay all reasonable expenses of the wife in the prosecution or defense of the action when such divorce has been granted or refused, and give judgment therefor. L. '91 42.

Property settled out of court does not deprive court of power to make order for welfare of children, *Miller v. Miller*, 103 W. 569. After divorce no suit money in proceedings, *Dolby v. Dolby* 93 W. 350.

Temporary alimony and suit money not allowed if wife has more resources than community, *Dilatush v. Dilatush*, 102 W. Delinquent husband cannot be vexed by the superior court compelling him to pay alimony pending appeal—his supersedeas bond does not cover such alimony—prohi-

bition, Surry v. Surry 84 W. 269.

Suit money allowed in action for maintenance without divorce, State ex rel. Young v. Superior Court 85 W. 72; affirmed, Robinson v. Robinson 87 W. 520.

Alimony, etc., may be allowed pending appeal, Lewis v. Lewis 83 W. 671.

Dismissal of action and small attorney's fee sustained as in discretion, Griffith v. Griffith 74 W. 284.

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Court can not change agreement of parties regarding attorney's fees but may allowed fees—prohibition to court seeking to modify decree to settle question of fees between the parties, State ex rel. Arthur v. Superior Court 58 W. 97.

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Attorneys can not intervene for costs and fees expended when divorce action is settled Hillman v. Hillman 42 W. 95.

No action in this state for temporary alimony decreed in another state, Van Horn v. Van Horn 48 W. 388.

**§7508. Disposition of Children and Property. §2007.** In granting a divorce the court shall also make such disposition of the property of the parties as shall appear just and equitable, having regard to the respective merits of the parties, and to the condition in which they will be left by such divorce, and to the party through whom the property was acquired, and to the burdens imposed upon it for the benefit of the children, and shall make provision for the guardianship, custody, and support and education of the minor children of such marriage L. '91 42.

Permanent alimony increased on appeal, Dober v. Dober, 103 W. 283.

Leaving property in common is error, Thompson v. Thompson, 100 W. 671.

Decree will not be modified if either party entitled—wife deserted but given children with part of property, McDonall v. McDonall, 95 W. 553.

Agreement regarding property prior to judgment cannot affect the judgment, Cross v. Cross, 98 W. 651.

Decree for separate maintenance not res judicata as to subsequent conduct, Appleton v. Appleton, 97 W. 199.

Decree absolute when no minor children is mere money judgment to be modified only in usual manner, Ruge v. Ruge, 97 W. 51.

Action in another jurisdiction on decree for alimony—court cannot modify alimony due, Cotter v. Cotter 225 Fed. 471.

Decree modified on showing husband would have to sacrifice his half of property to pay, Worden v. Worden 84 W. 614.

Court properly refused to proceed with trial because alimony not paid, State ex rel. Crombie v. Superior Court 85 W. 607.

Judgment for contempt for not paying alimony cannot be sustained on the facts, Crombie v. Crombie 88 W. 520.

Custody of child divided, appeal from decision, mandamus will not lie to compel divided custody pending appeal, State ex rel. Clark v. Superior Court 90 W. 80.

Wife's deed to husband on threat of husband to charge adultery in divorce, sustained, Thompson v. Brozo 92 W. 79.

Attorney's fees are not "necessaries" and husband liable only as court may direct Zent v. Sullivan 47 W. 315.

Wife allowed suit money in action to annul voidable marriage—ruling of court that she was not is reviewable, Arey v. Arey 22 W. 261.

Allowance of \$300 counsel fees is reasonable though property had been divided and wife able to defend action, Colvin v. Colvin 15 W. 490.

Refusal to pay over money is not enforceable by contempt process, In re Van Alstine 21 W. 194.

Attorney's fees can not be charged to third parties in the action, Prouty v. Prouty 4 W. 174.

Wife will not be given expense of appeal when husband unable to pay, Bachelor v. Bachelor 30 W. 203.

Failure of defendant to pay suit money will not warrant answer being stricken, Bachelor v. Bachelor 30 W. 639.

Allowance of temporary alimony and expenses is discretionary, Lee v. Lee 3 W. 236.

Husband is compelled to pay wife's expenses, Thorndike v. Thorndike 1 W. T. 176.

Custody of child divided, school year and vacation, Clark v. Clark 92 W. 450.

Mother must be clearly unfit to deprive her of custody of child, Freeland v. Freeland 92 W. 482.

Property not divided is held in common after divorce, Harvey v. Pocock 92 W. 625.

Contempt for not paying alimony cannot be enforced if husband has not ability to pay, Boyle v. Boyle 74 W. 529.

In contempt proceedings after showing ability of defendant to pay alimony burden is on defendant to show his inability, Croft v. Croft 77 W. 620.

Contempt decrees for failure to pay alimony sustained, Croft v. Croft, 77 W. 620; Surry v. Surry 78 W. 370.

Default in alimony payment does not prevent motion for modification of decree, State ex rel. Jones v. Superior Court 78 W. 372.

Court adjudged \$3,000 alimony, to be paid in three days, and appointed receiver. Defendant purged himself of contempt by showing property held by receiver, Gust v. Gust 78 W. 412.

Wife granted alimony is creditor to set aside fraudulent conveyances—allowance out of separate property held reasonable, Masterson v. Ogden 78 W. 644.

Jealousy of divorced wife after remarriage of husband is not ground for additional alimony and modifying partial custody of children, Herrett v. Herrett 80 W. 474.

Husband pretended reconciliation and obtained deed from wife, deed set aside,



Proof of marriage in civil cases—foreign contract marriage where such is held void, *Summerville v. Summerville* 31 W. 411. Oregon territory had power to grant divorce—powers of legislature construed, *Maynard v. Valentine* 2 W. T. 3.

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Agreement regarding property prior to judgment cannot affect the judgment, Cross v. Cross, 98 W. 651.

Decree for separate maintenance not res judicata as to subsequent conduct, Appleton v. Appleton, 97 W. 199.

Decree absolute when no minor children is mere money judgment to be modified

Attorney's fees are not "necessaries" and husband liable only as court may direct Zent v. Sullivan 47 W. 315.

Wife allowed suit money in action to annul voidable marriage—ruling of court that she was not is reviewable, Arey v. Arey 22 W. 261.

Allowance of \$300 counsel fees is reasonable though property had been divided and wife able to defend action, Colvin v. Colvin 15 W. 490.

Refusal to pay over money is not enforceable by contempt process, In re Van Alstine 21 W. 194.

Attorney's fees can not be charged to third parties in the action, Prouty v. Prouty 4 W. 174.

Wife will not be given expense of appeal when husband unable to pay, Bachelor v. Bachelor 30 W. 203.

Failure of defendant to pay suit money will not warrant answer being stricken, Bachelor v. Bachelor 30 W. 639.

Allowance of temporary alimony and expenses is discretionary, Lee v. Lee 3 W. 236.

Husband is compelled to pay wife's expenses, Thorndike v. Thorndike 1 W. T. 176.

Custody of child divided, school year and vacation, Clark v. Clark 92 W. 450.

Mother must be clearly unfit to deprive her of custody of child, Freeland v. Freeland 92 W. 482.

Property not divided is held in common after divorce, Harvey v. Pocock 92 W. 625.

Contempt for not paying alimony cannot be enforced if husband has not ability to pay, Boyle v. Boyle 74 W. 529.

In contempt proceedings after showing ability of defendant to pay alimony burden is on defendant to show his inability, Croft v. Croft 77 W. 620.

Contempt decrees for failure to pay alimony sustained, Croft v. Croft, 77 W. 620;

**§7507. Interlocutory Orders—Appeal. §2006.** Pending the action for the divorce, the court, or judge thereof, may make, and by attachment enforce, such orders for the disposition of the persons, property and children of the parties as may be deemed right and proper, and such orders relative to the expenses of such action as will insure to the wife an efficient preparation of her case, and a fair and impartial trial thereof; at the conclusion of the trial the court must make and file findings of fact and conclusions of law. If it determines that no divorce shall be granted final judgment must thereupon be entered accordingly. If, however, the court determines that either party, or both, is entitled to a divorce an interlocutory order must be entered accordingly, declaring that the party in whose favor the court decides is entitled to a decree of divorce as hereinafter provided; which order shall also make all necessary provisions as to alimony, costs, care, custody, support and education of children and custody, management and division of property, which order as to the cus-



Proof of marriage in civil cases—foreign contract marriage where such is held void, *Summerville v. Summerville* 31 W. 411.

Act '63 forbidding reversal of decree is invalid 1 W. T. 569.

Oregon territory had power to grant divorce—powers of legislature construed, *Maynard v. Valentine* 2 W. T. 3.

Allowance of divorce for chronic dementia is valid, *Hickman v. Hickman* 1 W. 257.

**§7502. Doubtful Marriage.** §2001. When there is any doubt as to the facts rendering a marriage void, either party may apply for, and on proof obtain a decree of nullity of marriage. L. '91, 42.

Ceremonial marriage by holding out as wife, *Potts v. Potts* 81 W. 27.

Marriage by males over 14 and females over 12 when consummated held valid, *Cushman v. Cushman* 80 W. 615. Plaintiff may have a marriage annulled on the ground of her own incapacity, *Sortore v. Sortore*, 70 W. 410.

**§7503. One Year's Residence.** §2002.—3. Any person who has been a resident of the State for one year may file his or her complaint for a divorce or decree of nullity of marriage under oath in the superior court of the county where he or she may reside, and like proceedings shall be had thereon as in civil cases.

Change of residence pending trial will not defeat action, *Hill v. Hill* 87 W. 150.

Cross-complaint need not show year's residence—particulars of adultery, *Powell v. Powell*, 66 W. 561.

Suit for maintenance before one year—alimony, *State ex rel. Lloyd v. Superior Court* 55 W. 347.

Husband and wife both sued and stipulated that the actions be tried together—wife not in state year—but filed cross-complaint after a year, held good, *Kane v. Kane* 35 W. 517.

Without necessary residence court is without jurisdiction, *Van Alstine v. Van Alstine* 23 W. 310.

Defendant can not have change of

venue, *Pfueller v. Superior Court* 14 W. 115.

Complaint may be verified on information and belief, *Burdick v. Burdick* 7 W. 533.

If husband has necessary residence wife has for the purpose of bringing action though she has not one year residence, *Prouty v. Prouty* 4 W. 174.

Failure to grant change of venue to county of defendants is not error, *Bachelor v. Bachelor* 30 W. 639.

Residence must be shown conclusively, *Luce v. Luce* 15 W. 608.

Absence from the state held not to defeat residence, *Summerville v. Summerville* 31 W. 411.

**§7504. Proofs Shall Be Taken.** §2003.—4. When the defendant does not answer, or answering, admits the allegations in the complaint, the court shall require proof before granting a divorce or decree of nullity.

**§7505. Divorce to Either Party.** §2004.—5. The defendant may, in addition to his or her answer, file a cross complaint for divorce, and the court may in such case grant a divorce, if any, in favor of either party or as an application of both.

Cross-complainant obtaining decree can not set aside decree after three years because of want of residence of plaintiff nor on the ground of fraud because complaint alleged property to be one-half its actual value, *Ferry v. Ferry* 9 W. 239.

Residence of divorced husband is not residence of the wife under donation law, *Mayland v. Hill* 2 W. T. 321.

**§7506. When Both Parties Deemed Applying.** §2005. Both parties shall be considered as applying for a divorce when the complaints of both are filed in the same action, and when the defendant, by his or her cross-com-

tody, management and division of property shall be final and conclusive upon the parties subject only to the right of appeal; but in no case shall such interlocutory order be considered or construed to have the effect of dissolving the marriage of the parties to the action, or of granting a divorce, until final judgment is entered: Provided, That the court shall, at all times, have the power to grant any and all restraining orders that may be necessary to protect the parties and secure justice. Appeals may be taken from such interlocutory order within 90 days after its entry. L. '21 ch. 109.

**§7507a. Final Judgment—No Appeal.** §988-1. At any time after six months have expired, after the entry of such interlocutory order, and upon the conclusion of an appeal, if taken therefrom, the court, on motion of either party, shall confirm such order and enter a final judgment granting an absolute divorce, from which no appeal shall lie. L. '21 ch. 109.

bition, *Surry v. Surry* 84 W. 269.

Suit money allowed in action for maintenance without divorce, *State ex rel. Young v. Superior Court* 85 W. 72; affirmed, *Robinson v. Robinson* 87 W. 520.

Alimony, etc., may be allowed pending appeal, *Lewis v. Lewis* 83 W. 671.

Dismissal of action and small attorney's fee sustained as in discretion, *Griffith v. Griffith* 74 W. 284.

Alimony and suit money refused by supreme court when both had property and no community property, *Gust v. Gust*, 69 W. 220; reversed, *Griffith v. Griffith*, 71 W. 56.

Court can not change agreement of parties regarding attorney's fees but may allowed fees—prohibition to court seeking to modify decree to settle question of fees between the parties, *State ex rel. Arthur v. Superior Court* 58 W. 97.

Action settled and dismissed husband not liable for wife's attorney fee—wife liable, *Humphries v. Cooper* 55 W. 376.

Attorneys can not intervene for costs and fees expended when divorce action is settled *Hillman v. Hillman* 42 W. 95.

No action in this state for temporary alimony decreed in another state, *Van Horn v. Van Horn* 48 W. 388.

**§7508. Disposition of Children and Property. §2007.** In granting a divorce the court shall also make such disposition of the property of the parties as shall appear just and equitable, having regard to the respective merits of the parties, and to the condition in which they will be left by such divorce, and to the party through whom the property was acquired, and to the burdens imposed upon it for the benefit of the children, and shall make provision for the guardianship, custody, and support and education of the minor children of such marriage L. '91 42.

Permanent alimony increased on appeal, *Dober v. Dober*, 103 W. 283.

Leaving property in common is error, *Thompson v. Thompson*, 100 W. 671.

Decree will not be modified if either party entitled—wife deserted but given children with part of property, *McDonall v. McDonall*, 95 W. 553.

Agreement regarding property prior to judgment cannot affect the judgment, *Cross v. Cross*, 98 W. 651.

Decree for separate maintenance not res judicata as to subsequent conduct, *Appleton v. Appleton*, 97 W. 199.

Decree absolute when no minor children is mere money judgment to be modified only in usual manner, *Ruge v. Ruge*, 97 W. 51.

Action in another jurisdiction on decree for alimony—court cannot modify alimony due, *Cotter v. Cotter* 225 Fed. 471.

Decree modified on showing husband would have to sacrifice his half of property to pay, *Worden v. Worden* 84 W. 614.

Court properly refused to proceed with trial because alimony not paid, *State ex rel. Crombie v. Superior Court* 85 W. 607.

Judgment for contempt for not paying alimony cannot be sustained on the facts, *Crombie v. Crombie* 88 W. 520.

Custody of child divided, appeal from decision, mandamus will not lie to compel divided custody pending appeal, *State ex rel. Clark v. Superior Court* 90 W. 80.

Wife's deed to husband on threat of husband to charge adultery in divorce, sustained, *Thompson v. Brozo* 92 W. 79.

Attorney's fees are not "necessaries" and husband liable only as court may direct *Zent v. Sullivan* 47 W. 315.

Wife allowed suit money in action to annul voidable marriage—ruling of court that she was not is reviewable, *Arey v. Arey* 22 W. 261.

Allowance of \$300 counsel fees is reasonable though property had been divided and wife able to defend action, *Colvin v. Colvin* 15 W. 490.

Refusal to pay over money is not enforceable by contempt process, *In re Van Alstine* 21 W. 194.

Attorney's fees can not be charged to third parties in the action, *Prouty v. Prouty* 4 W. 174.

Wife will not be given expense of appeal when husband unable to pay, *Bachelor v. Bachelor* 30 W. 203.

Failure of defendant to pay suit money will not warrant answer being stricken, *Bachelor v. Bachelor* 30 W. 639.

Allowance of temporary alimony and expenses is discretionary, *Lee v. Lee* 3 W. 236.

Husband is compelled to pay wife's expenses, *Thorndike v. Thorndike* 1 W. T. 176.

Custody of child divided, school year and vacation, *Clark v. Clark* 92 W. 450.

Mother must be clearly unfit to deprive her of custody of child, *Freeland v. Freeland* 92 W. 482.

Property not divided is held in common after divorce, *Harvey v. Pocock* 92 W. 625.

Contempt for not paying alimony cannot be enforced if husband has not ability to pay, *Boyle v. Boyle* 74 W. 529.

In contempt proceedings after showing ability of defendant to pay alimony burden is on defendant to show his inability, *Croft v. Croft* 77 W. 620.

Contempt decrees for failure to pay alimony sustained, *Croft v. Croft*, 77 W. 620; *Surry v. Surry* 78 W. 370.

Default in alimony payment does not prevent motion for modification of decree, *State ex rel. Jones v. Superior Court* 78 W. 372.

Court adjudged \$3,000 alimony, to be paid in three days, and appointed receiver. Defendant purged himself of contempt by showing property held by receiver, *Gust v. Gust* 78 W. 412.

Wife granted alimony is creditor to set aside fraudulent conveyances—allowance out of separate property held reasonable, *Masterson v. Ogden* 78 W. 644.

Jealousy of divorced wife after remarriage of husband is not ground for additional alimony and modifying partial custody of children, *Herrett v. Herrett* 80 W. 474.

Husband pretended reconciliation and obtained deed from wife, deed set aside,



Yeager v. Yeager 82 W. 271.

Wife given decree and awarded child for cruelty—money instead of unproductive property—attorney fee, Willson v. Willson 84 W. 240.

Alimony due is a debt courts cannot modify, Beers v. Beers 74 W. 458.

Alimony may be decreed paid out of estate of deceased, State v. Bayley 75 W. 184.

Agreement of the parties dividing property, etc., does not contravene public policy, Stone v. Bayley 75 W. 184.

Separate property of husband prior to marriage may be decreed to wife, Hale v. Hale 76 W. 34.

Child not provided for in decree, wife may afterward sue for support of child, Schoennauer v. Schoennauer 77 W. 132.

Equal division of husband's separate property held inequitable—receiver unwarranted—attorney fee, Gust v. Gust 78 W. 414.

Remarriage of wife and husband's support of child no defense to alimony, McGill v. McGill, 67 W. 303.

Original decree of \$15 per month was modified on remarriage of wife. Later wife sought without success to obtain support for child, White v. McDowell 74 W. 44.

Property not divided is held in common, Hicks v. Hicks, 69 W. 627.

Includes property outside county, Catton v. Catton, 69 W. 130.

The power to partition property is auxiliary to the power to grant the divorce, Wilkinson v. Wilkinson, 63 W. 126.

Decree ordered property deeded in trust for children, parties remarried and asked decree be modified, held court had no jurisdiction to direct conveyance, Lowe v. Lowe 53 W. 50.

Immaterial when small amount of property whether separate or community—wife with five children allowed all of property, Leaser v. Leaser 53 W. 135.

Alimony, pecuniary inability to pay complete defense—facts so held, Holcomb v. Holcomb 53 W. 611.

Award of more than half of community property to wife left remainder to husband though not mentioned in decree Nelson v. McPhee 59 W. 103.

Alimony judgment is not lien unless decree so provides, Seattle B. & M. Co. v. Talley 59 W. 168.

Daughter 14 years old awarded to mother, Wingard v. Wingard 56 W. 354.

Permanent alimony to wife may be discontinued—second order reviewed on evidence in first order, Mahncke v. Mahncke 43 W. 425.

Decree awarding \$10,000 to wife and \$1,000 to husband modified, Budlong v. Budlong 43 W. 423.

Community property not disposed of spouses become tenants in common—jointly liable on note, Barkley v. Am. Sav. Bk. etc. Co. 61 W. 415.

Division of property should not be made when its value would be impaired—money judgment Richardson v. Richardson 44 W. 431.

Decree abandoned cannot be re-instated after second decree making different disposition of property, State ex rel. Tufton v. Superior Court 46 W. 395.

Community property omitted becomes common property, Ambrose v. Moore 46 W. 463.

Mother may have decree awarding child to stranger modified—stipulations are mere evidence, Curtis v. Curtis 46 W. 664.

All of the separate and community property awarded the wife, Ransdell v. Ransdell 47 W. 444.

Alimony etc. by supreme court, Holcomb v. Holcomb 49 W. 498; Sullivan v. Sullivan 49 W. 508.

Property not mentioned held by the respective spouses according to their substantial interest, James v. James 51 W. 60.

Any errors as to title are cured by decree and no change will be made, Dodds v. Dodds 51 W. 293.

Divided custody of child sustained, Goerig v. Goerig 51 W. 333.

Children should be provided for—if not parents equally responsible—discretion—costs, Hector v. Hector 51 W. 434.

Alimony to husband held sufficient, Kolbe v. Kolbe 50 W. 298.

Monthly alimony granted when no property, Claiborne v. Claiborne 47 W. 200.

Custody of children and all the property awarded to husband and children for adultery of wife, Cozard v. Cozard 48 W. 124.

Custody of children determined by their welfare, Kane v. Miller 40 W. 125.

All the community property properly awarded to the wife, Miller v. Miller 38 W. 605.

Husband at fault and deeded property heavily incumbered to wife, held that all the property and children properly given to wife Clemans v. Western 39 W. 290.

All community property and custody of two children awarded to wife, Mitchell v. Mitchell 39 W. 431.

Judgment in favor of wife may be declared a lien, Kane v. Kane 35 W. 517.

Division of property set aside—custody of children when neither party fit, Richardson v. Richardson 36 W. 272.

Husband can not be held in contempt for failure to pay alimony on decree entered after default judgment vacated, Metler v. Metler 32 W. 494.

Fraudulent conveyances may be set aside in an action for divorce though there is enough property not affected, but it is not within jurisdiction, Prouty v. Prouty 4 W. 174; Fields v. Fields 2 W. 441.

Defendants not entitled to jury trial, id.

After divorce without personal service the wife may sue for alimony, Adams v. Abbott 21 W. 29.

Decree for alimony is not debt in the meaning of the constitution forbidding imprisonment for debt and may be enforced by contempt process, In re Cave 26 W. 213.

This section authorizes permanent alimony, id.

If court has jurisdiction of the property and the parties the proceeding can not be inquired into in habeas corpus, id.

Citation in contempt not necessary if party in court, id.

Complaint for separate maintenance by the wife alleging generally the perform-

ance of her duty as a wife and that the husband does not support her is sufficient, *Branscheid v. Branscheid* 27 W. 368.

Court can declare status of property in suit for maintenance, *id.*

Both community and separate property may be adjudicated, *Webster v. Webster* 2 W. 417; *Fields v. Fields* *id.* 441.

Custody of children given to wife sustained, *Fields v. Fields* 2 W. 441.

Continuing alimony made a lien on certain realty may on failure to pay be reduced to gross sum and lien foreclosed, *Trumbull v. Trumbull* 26 W. 133.

Court has power to modify decree respecting children though time of appeal has expired, *Koontz v. Koontz* 25 W. 336.

Where proper provision is not made in original decree for support of children wife may subsequently recover for expense of support of children awarded to her, *Gibson v. Gibson* 18 W. 489; *Ditmar v. Ditmar* 27 W. 13.

Award of child to wife in her second action for divorce is not prejudicial, *Gibson v. Gibson* 18 W. 489.

In habeas corpus by mother on alleged decree of another state giving her custody, the father being better custodian of children, decree of children to mother is erroneous, *Kentzler v. Kentzler* 3 W. 166.

Court has power to dispose of joint and separate property, *Webster v. Webster* 2 W. 417.

Where husband's property has not been brought in alimony is not a lien and is subsequent to homestead, *Phillbrick v. Andrews* 8 W. 7.

Action on judgment of another state, *Trowbridge v. Spinning* 23 W. 48.

Order respecting children is not of such permanent nature that parent given cus-

tody can deprive the other of custody at death, *In re Neff* 20 W. 652.

Though alimony decreed a lien contempt process may be had—ability to pay is shown when defendant could borrow twice amount to use otherwise, *State ex rel. Ditmar v. Ditmar* 19 W. 324.

Party seeking to enforce decree must have himself obeyed decree, *Smith v. Smith* 18 W. 158.

Award of all the personal property in the state to the wife, husband can not recover more than costs and damage for detention though action commenced before decree, *Carney v. Simpson* 15 W. 227.

If mother a proper person children of tender years should be awarded to her, *Smith v. Smith* 15 W. 237.

Father and mother may agree to modify decree as to children, *Ackley v. Burchard* 11 W. 128.

Periodical alimony a lien may be reduced to gross sum and foreclosed and paid to wife—action for support of children after divorce and alimony, *King v. Miller* 10 W. 274.

Husband and wife agreed as to property and husband granted use of certain premises and rental if he conveyed—attorney could not waive wife's rights—construction of contract, *Budlong v. Budlong* 31 W. 228.

Husband can not escape paying alimony by remarriage thus increasing his expense and inability to pay, *State ex rel. Brown v. Brown* 31 W. 397.

Subsequent departure of children from the state after action commenced will not deprive the court of jurisdiction, *State v. Rhoades* 29 W. 61.

Order respecting children is subject to change, *Tierney v. Tierney* 1 W. T. 569.

**§7511. Prosecuting Attorney's Duties.** §2010. Each party to any divorce action shall serve the prosecuting attorney of the county in which the action is commenced with copies of all pleadings, notice of trial, motions or orders therein, at the time of or immediately after their service upon the opposite party or his or her counsel, and in case the summons is served by publication a copy of the summons and complaint shall be served upon the prosecuting attorney immediately after the filing of the complaint in the county clerk's office. It shall be the duty of the prosecuting attorney to appear upon the trial of every default or non-contested divorce case, and in such other divorce cases as the presiding judge may direct, in his county and advise the court, and to that end he shall have power upon order of the court to cause witnesses to be subpoenaed to testify at the trial, respecting any charges made in the complaint or answer or upon any vital matter touching the status of the parties or the performance or neglect of any duty by either, and the witness fees of such witnesses called by the prosecuting attorney shall be charged to the county. Neither the prosecuting attorney nor his deputy nor the law partner of either shall accept employment in any divorce case in his county or receive any fee or compensation from either party. L. '21 ch. 109.

**§7511-1. Retroactive Effect Denied.** §995-1. Actions for divorce filed prior to the taking effect of this act shall be governed by the law applicable thereto at the time of the commencement of the action. L. '21 ch. 109.

**§7511-2. Venue of Procedure Affecting Children.** §995-2. Hereafter every action or proceeding to change or modify any final order, judgment or decree heretofore or hereafter made and entered in any divorce action



Yeager v. Yeager 82 W. 271.

Wife given decree and awarded child for cruelty—money instead of unproductive property—attorney fee, Willson v. Willson 84 W. 240.

Alimony due is a debt courts cannot modify, Beers v. Beers 74 W. 458.

Alimony may be decreed paid out of estate of deceased, State v. Bayley 75 W. 184.

Agreement of the parties dividing property, etc., does not contravene public policy, Stone v. Bayley 75 W. 184.

Separate property of husband prior to marriage may be decreed to wife, Hale v. Hale 76 W. 34.

Child not provided for in decree, wife may afterward sue for support of child, Schoennauer v. Schoennauer 77 W. 132.

Equal division of husband's separate property held inequitable—receiver unwarranted—attorney fee, Gust v. Gust 78 W. 414.

Remarriage of wife and husband's support of child no defense to alimony, McGill v. McGill, 67 W. 303.

Original decree of \$15 per month was modified on remarriage of wife. Later wife sought without success to obtain support for child, White v. McDowell 74 W. 44.

Property not divided is held in common, Hicks v. Hicks, 69 W. 627.

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The power to partition property is auxiliary to the power to grant the divorce, Wilkinson v. Wilkinson, 63 W. 126.

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Community property omitted becomes common property, Ambrose v. Moore 46 W. 463.

Mother may have decree awarding child to stranger modified—stipulations are mere evidence, Curtis v. Curtis 46 W. 664.

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Alimony etc. by supreme court, Holcomb v. Holcomb 49 W. 498; Sullivan v. Sullivan 49 W. 508.

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Any errors as to title are cured by decree and no change will be made, Dodds v. Dodds 51 W. 293.

Divided custody of child sustained, Goerig v. Goerig 51 W. 333.

Children should be provided for—if not parents equally responsible—discretion—costs, Hector v. Hector 51 W. 434.

Alimony to husband held sufficient, Kolbe v. Kolbe 50 W. 298.

Monthly alimony granted when no property, Claiborne v. Claiborne 47 W. 200.

Custody of children and all the property awarded to husband and children for adultery of wife, Cozard v. Cozard 48 W. 124.

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~~All community property and custody of.~~

or proceeding in relation to the care, custody or control, or the support and maintenance, of the minor child or children of the marriage shall be brought in the county where said minor child or children affected are then residing, or in the county where the parents or other person who has the care, custody or control of the said minor child or children affected is then residing. L. '21 ch. 109.

**§7511-3. Original Judgment to Be Filed.** §995-3. Upon the filing of a properly verified petition, to be entitled as in the original divorce action or proceedings, together with a certified copy of the order, judgment or decree sought to be changed or modified thereby, the superior court of the county in which said petition is filed shall have full and complete jurisdiction of the cause and shall thereupon order such notice of the hearing of said petition to be given as the court shall determine. L. '21 ch. 109.

**§7511-4. Supplemental Records and Files.** §995-4. The court shall have power to cause either party to said action or proceeding to file so much or all of the records and files in the original divorce action or proceeding as the court shall deem necessary or proper; and to make and enter all necessary or proper orders for a full hearing and determination of said petition. L. '21 ch. 109.

**§7511-5. Hearing—Judgment—Certification Back.** §995-5. Upon a full hearing and determination of said petition the court shall make and enter such order, judgment or decree in said cause as the evidence and the law requires; a certified copy of such order, judgment or decree to be filed and entered in the county wherein said original divorce action or proceeding was had within thirty days thereof. L. '21 ch. 109.

ance of her duty as a wife and that the husband does not support her is sufficient, *Branscheid v. Branscheid* 27 W. 368.

Court can declare status of property in suit for maintenance, *id.*

Both community and separate property may be adjudicated, *Webster v. Webster* 1 W. 417; *Fields v. Fields* *id.* 441.

Custody of children given to wife sustained, *Fields v. Fields* 2 W. 441.

Continuing alimony made a lien on certain realty may on failure to pay be reduced to gross sum and lien foreclosed, *Trumbull v. Trumbull* 26 W. 133.

Court has power to modify decree respecting children though time of appeal has expired, *Koontz v. Koontz* 25 W. 336.

Where proper provision is not made in original decree for support of children wife may subsequently recover for expense of support of children awarded to her, *Gibson v. Gibson* 18 W. 489; *Ditmar v. Ditmar* 27 W. 13.

Award of child to wife in her second action for divorce is not prejudicial, *Gibson v. Gibson* 18 W. 489.

In habeas corpus by mother on alleged decree of another state giving her custody, the father being better custodian of children, decree of children to mother is erroneous, *Kentzler v. Kentzler* 3 W. 166.

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Where husband's property has not been brought in alimony is not a lien and is subsequent to homestead, *Phillbrick v. Andrews* 8 W. 7.

Action on judgment of another state, *Trowbridge v. Spinning* 23 W. 48.

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tody can deprive the other of custody at death, *In re Neff* 20 W. 652.

Though alimony decreed a lien contempt process may be had—ability to pay is shown when defendant could borrow twice amount to use otherwise, *State ex rel. Ditmar v. Ditmar* 19 W. 324.

Party seeking to enforce decree must have himself obeyed decree, *Smith v. Smith* 18 W. 158.

Award of all the personal property in the state to the wife, husband can not recover more than costs and damage for detention though action commenced before decree, *Carney v. Simpson* 15 W. 227.

If mother a proper person children of tender years should be awarded to her, *Smith v. Smith* 15 W. 237.

Father and mother may agree to modify decree as to children, *Ackley v. Burchard* 11 W. 128.

Periodical alimony a lien may be reduced to gross sum and foreclosed and paid to wife—action for support of children after divorce and alimony, *King v. Miller* 10 W. 274.

Husband and wife agreed as to property and husband granted use of certain premises and rental if he conveyed—attorney could not waive wife's rights—construction of contract, *Budlong v. Budlong* 31 W. 228.

Husband can not escape paying alimony by remarriage thus increasing his expense and inability to pay, *State ex rel. Brown v. Brown* 31 W. 397.

Subsequent departure of children from the state after action commenced will not deprive the court of jurisdiction, *State v. Rhoades* 29 W. 61.

Order respecting children is subject to change, *Tierney v. Tierney* 1 W. T. 569.

**§7509. Both Parties Divorced. §2008.** Whenever judgment of divorce from the bonds of matrimony is granted by the courts in this state, the court shall order a full and complete dissolution of the marriage as to both parties. L. '91 42.

**§7510. Name of Woman. §2009.** In all actions for divorce, if a divorce be granted, the court may, for just and reasonable cause, change the name of the female, who shall thereafter be known and called by such name as the court shall in its order or decree appoint. L. '91 42.

**§7511. When Prosecuting Attorney Shall Appear. §2010.** Whenever a complaint for divorce remains undefended it shall be the duty of the prosecuting attorney to resist such complaint, but no prosecuting attorney shall be employed in or allowed to conduct any action for a divorce on the part of the plaintiff or applicant in the courts of this state; nor shall any prosecuting attorney be allowed to resist a complaint for divorce in those cases where the defendant does not appear, or appearing admits the allegations of the complaint, if the attorney for the applicant is a partner of such prosecuting attorney in the practice of law, or keeps his office with such prosecuting attorney; but in all such cases the court or judge before whom the case is to be heard shall appoint an attorney to resist the complaint, who shall be entitled to the compensation allowed by law to prosecuting attorneys in such cases. L. '91 42.

Service on prosecuting attorney (court rules) §8431d.



**§7512. Findings Required—Appeal.** §2011.—12. In all instances where a superior court shall grant a divorce, it shall be for cause distinctly stated in the complaint, and proved and found by the court, and the court shall state the facts found, upon which the decree is rendered; and when either party shall signify a desire to appeal from any of the orders of the court, in the disposition of the property or the children, the court shall certify the evidence adduced on the trial and the supreme court shall be possessed of the whole case as fully as the superior court was, and may reverse, modify or affirm said judgment according to the real merits of the case.

Court may order stenographic notes to be produced, *State ex Griffith v. Court*, 71 W. 386.

Fact that wife appeals does not preclude alimony in Supreme court, *Griffith v. Griffith*, 71 W. 56; reversed *id.* 71 W. 56.

Superior court loses all jurisdiction when appealed from without stay, *State ex Gibson v. Court*, 69 W. 280.

Supreme court, on appeal by the husband from orders relating to alimony, may grant suit money and attorney's fees before final decree in the court below, *Gallagher v. Gallagher*, 65 W. 310; reversed, *Griffith v. Griffith* 71 W. 56.

Findings of facts generally, §8486.

No service of process, defendant verified answer and appeared by attorney; vacation of decree sought because of dissatisfaction with property settlement, *Tausick v. Tausick* 52 W. 301.

Appeal from refusal to vacate decree on ground of fraud will not be dismissed—fraud not shown. *McDonald v. McDonald* 34 W. 293.

Court can not vacate default decree, *Metler v. Metler* 32 W. 494.

Formerly findings were not required, *Madison v. Madison* 1 W. T. 60; but if made they stood as a verdict, *Tierney v. Tierney* 1 W. T. 569.

**§7513. Civil Practice Applies.** §2012. The practice in civil actions shall govern all proceedings in the trial of actions for divorce, except that trial by jury is dispensed with. L. '91 42.

Misconduct of wife prior to property settlement unknown to husband is not fraud to set aside settlement, *Krug v. Krug* 81 W. 461.

Collusive divorce vacated, *Robinson v. Robinson* 77 W. 663.

Default judgment not vacated after time for appeal when one party again married—discretion—facts could have been put in defense—no showing of plaintiff's residence, *Faulkner v. Faulkner* 90 W. 74.

**Substitute—AN ACT** prohibiting divorced persons from contracting marriages within the period in which an appeal may be taken, and providing punishment for the violation thereof. Approved March 9, 1893. Laws '93 p 225.

**§7514. Divorced Person Not to Marry Within Time of Appeal.** §1. Whenever a judgment or decree of divorce from the bonds of matrimony is granted by the courts in this state, neither party thereto shall be capable of contracting marriage with a third person during the period in which an appeal may be taken has expired; and in

**§7514. Repealed** L. '21 ch. 109.

shall intermarry with a third person until the cause has been fully determined; and it shall be unlawful for any divorced person to intermarry with any third person within six months from the date of the entry of the judgment or decree granting the divorce, or in case an appeal is taken it shall be unlawful to contract such marriage until judgment be rendered on said appeal in the supreme court. All marriages contracted in violation of the provisions of this section, whether contracted within or without this state, shall be void.

Validity of marriage contrary to statute depends on domicile—party leaving state—presumption of validity—estoppel, *Pierce v. Pierce* 58 W. 622.

Plaintiff married second time in belief that no divorce necessary in first marriage—presumption of validity after seven years and children born, *Potter v. Potter* 45 W. 401.

If domiciled in another country person may remarry at any time, *State v. Fenn* 47 W. 561.

Construction of former statute, 4 W. 703; 22 W. 116.

Marriage within six months in foreign jurisdiction and return to this state is void—issue not legitimate—no homestead nor fire insurance exemption, *Peerless Pacific Co. v. Burckhard* 90 W. 221.

**§7515. — Decree Shall Prohibit.** §2. Whenever judgment or decree of divorce from the bonds of matrimony is granted by any court in this state, such judgment or decree shall expressly prohibit the plaintiff and defendant named therein from contracting any marriage with third parties within the period of six months from the date of the entry of such judgment or decree, and in case either party to said decree shall re-marry within said period, he or she shall be deemed guilty of contempt of the court granting such judgment, and against and punished in like manner.

**§7513.** Repealed L. '21 ch. 109.

**§7516.** Repealed L. '21 ch. 109.

than six months divorced is entitled to community property, In re Brenchley's Estate, 96 W. 223.

**§7516. — Contempt.** §3. It shall be the duty of the prosecuting attorney of each county to prosecute for contempt any person violating the provisions of any decree mentioned in the last section, rendered by any superior court of his county.

Contempts, general provisions, §7442.

## EJECTMENT.

Registration of land titles §5725; adverse State school, etc., lands, quieting title claims §5813. §6539.

**§7517. Actions for Possession or to Remove Cloud.** §536. Any person having a valid subsisting interest in real property, and a right to the possession thereof, may recover the same by action in the superior court of the proper county, to be brought against the tenant in possession; if there is no such tenant, then against the person claiming the title or some interest therein, and may have judgment in such action quieting or removing a cloud from plaintiff's title; an action to quiet title may be brought by the known heirs of any deceased person, or of any person presumed in law to be deceased, or by the successors in interest of such known heirs against the unknown heirs of such deceased person or against such person presumed to be deceased and his unknown heirs, and if it shall be made to appear in such action that the plaintiffs are heirs of the deceased person, or the person presumed in law to be deceased, or the successors in interest of such heirs, and have been in possession of the real property involved in such action for ten years preceding the time of the commencement of such action, and that during said time no person other than the plaintiff in the action or his grantors has claimed or asserted any right or title or interest in said property, the court may adjudge and decree the plaintiff or plaintiffs in such action to be the owners of such real property, free from all claims of any unknown heirs of such deceased person, or person presumed in law to be deceased; and an action to quiet title may be maintained by any person in the actual possession of real property against the unknown heirs of a person known to be dead, or against any person where it is not known whether such person is dead or not, and against the unknown heirs of such person, and if it shall thereafter transpire that such person was at the time of commencing such action dead the judgment or decree in such action shall be as binding and conclusive on the heirs of such person as though they had been known and named; and in all actions, under this section, to quiet or remove a cloud from the title to real property, if the defendant be absent or a nonresident of this state, or cannot, after due diligence, be found within the state, or conceals himself to avoid the service of summons, service may be made upon such defendant by publication of summons as provided by law; and the court may appoint a trustee for such absent or nonresident defendant, to make or cancel any deed or conveyance of whatsoever nature, or do any other act to carry into effect the judgment or the decree of the court. L. '11 383.

Compare §7534.

Limitation of actions, §8160.

Substitution of landlord for tenant, §7518.

Mortgagee cannot maintain, §7530.

Limitation of action to quiet title does not run against one in adverse possession

—plaintiff had deed made to his father and again to defendant in consideration of mar-

riage, being at the time a married man, held that his hands clean enough to recover, Anderson v. Hall 91 W. 376.

Summons and procedure in unlawful detainer will not sustain ejectment, Jeffries v. Spencer 86 W. 133.

Peaceable possession puts burden on other party to show better title—reputa-



**§7512. Findings Required—Appeal. §2011.—12.** In all instances where a superior court shall grant a divorce, it shall be for cause distinctly stated in the complaint, and proved and found by the court, and the court shall state the facts found, upon which the decree is rendered; and when either party shall signify a desire to appeal from any of the orders of the court, in the disposition of the property or the children, the court shall certify the evidence adduced on the trial and the supreme court shall be possessed of the whole case as fully as the superior court was, and may reverse, modify or affirm said judgment according to the real merits of the case.

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Final judgment not vacated by attorney; vacation of decree sought because of dissatisfaction with property settlement, *Tausick v. Tausick* 52 W. 301.

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**§7514. Divorced Person Not to Marry Within Time of Appeal. §1.** Whenever a judgment or decree of divorce from the bonds of matrimony is granted by the courts in this state, neither party thereto shall be capable of contracting marriage with a third person until the period in which an appeal may be taken has expired: and in case an appeal is taken, then neither party shall intermarry with a third person until the cause has been fully determined; and it shall be unlawful for any divorced person to intermarry with any third person within six months from the date of the entry of the judgment or decree granting the divorce, or in case an appeal is taken it shall be unlawful to contract such marriage until judgment be rendered on said appeal in the supreme court. All marriages contracted in violation of the provisions of this section, whether contracted within or without this state, shall be void.

Validity of marriage contrary to statute depends on domicile—party leaving state—presumption of validity—estoppel, *Pierce v. Pierce* 58 W. 622.

Plaintiff married second time in belief that no divorce necessary in first marriage—presumption of validity after seven years and children born, *Potter v. Potter* 45 W. 401.

If domiciled in another country person may remarry at any time, *State v. Fenn* 47 W. 561.

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— a man marrying man less community property, In re Branchley's Estate, 96 W. 223.

**§7516. — Contempt.** §3. It shall be the duty of the prosecuting attorney of each county to prosecute for contempt any person violating the provisions of any decree mentioned in the last section, rendered by any superior court of his county.

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Summons and procedure in unlawful detainer will not sustain ejectment, Jeffries v. Spencer 86 W. 133.

Peaceable possession puts burden on other party to show better title—reputa-



tion of boundary, *Hope v. Brown* 74 W. 421.

Clearing unenforcible cloud—judgment for husband's tort cloud on community, *Wilson v. Stone* 90 W. 365.

Affidavit of deceased against interest admitted to show last deed to defeat heirs, *Margett v. Wilson* 85 W. 98.

Actions to quiet title and recover possession are not the same, *Bruhn v. Pasco Land Co.*, 67 W. 490.

A decree quieting title may be had notwithstanding the invalidity of the claim moved against, *Crowley v. Byrne* 71 W. 444.

Demand or entry not necessary in action for possession for breach of condition subsequent, *Lewiston Water etc. Co. v. Brown* 42 W. 555.

Quit claim deed is equitable title to set aside, void tax title, *Brodsky v. Nelson* 57 W. 671.

Action is in equity in federal courts, *Warren v. Oregon & Washington Realty Co.* 156 Fed. 203.

Decree for one of two contesting cotenants quiets the other's title—use and taxes paid, *Del Notaro v. Douglas* 55 W. 493.

Judgment on disputed boundary is bar to action in ejectment, *Struntz v. Hood* 57 W. 578.

Holder of record title superior to execution plaintiff whose debtor had conveyed, *White v. McTorley* 47 W. 18.

Action for fraud after 20 years too late—negotiations or ill health no excuse—possession—lien for money paid on execution sale, *Carroll v. Hill Tract Imp. Co.* 44 W. 569.

Local assessments on which statute of limitation has run may be canceled of record, *Cushing v. Spokane* 45 W. 193.

Complaint need not allege that plaintiff is in possession nor that land is unoccupied, *Dueber v. Wolfe* 47 W. 634.

No decree if plaintiff not in conflict with defendant, *Mason v. Long* 49 W. 18.

Squatters afterward buying surface do not acquire coal deposits adversely, *Morgan v. Northern Pac. R. Co.* 50 W. 480.

Title of husband quieted and complaint of wife dismissed in action by wife for maintenance and partition of real property, *Loeper v. Loeper* 51 W. 682.

Answer in ejectment that execution sale is void sustained without directly attacking sale—estoppel to deny validity of sale, *McLeish v. Ball* 58 W. 690.

Action by heirs with equitable title against person in possession holding legal title—action dismissed as to part of conspirators, *Johnston v. Gerry* 34 W. 524.

If complaint good as to part of property general demurrer will not be sustained, *Morrison v. Berlin* 37 W. 600.

Purchaser at mortgage foreclosure may bring action—tax title cloud, *McManus v. Morgan* 38 W. 528.

Tenant having renounced lease is a stranger and this section applies, *Snyder v. Harding* 34 W. 286.

Plaintiff showing complete chain of title nonsuit cannot be had on extrinsic facts, *Wood v. Earls* 39 W. 21.

One action for possession and to remove cloud authorized—grant of right-of-way on condition that road built is condition subsequent and forfeiture claimed by assignee, *Reichenbach v. Washington etc. Ry.* 10 W. 357.

Possession prima facie basis for quieting title but if title alleged it will be passed on and if plaintiff fails defendant's title not to be inquired into, *Shelton Logging Co. v. Gosser* 26 W. 126.

Complaint not good to remove "cloud" held good against "adverse claim," *Watson v. Glover* 21 W. 677.

Tenant in common may maintain action to be let into possession as such and for rents etc., *Mable v. Whittaker* 10 W. 656.

Recovery of possession may be had without deraigning title—if relation of landlord and tenant does not exist it is not necessary to give notice to quit, *Shannon v. Grindstaff* 11 W. 536.

Tenant in possession is only necessary party defendant, *Raymond v. Morrison* 9 W. 156.

Any or all tenants in common may maintain action, *Hannegan v. Roth* 12 W. 695.

Equitable action to quiet title can not be maintained if land is occupied if timely objection is made, but ejectment will lie, *Spithill v. Jones* 3 W. 290; *Bates v. Drake* 28 W. 447.

Title may be quieted against fraudulent over-valuation in taxation, *Miller v. Pierce County* 28 W. 110.

Surviving partner can not quiet title until he obtains legal title, *Hannegan v. Roth* 12 W. 65.

Action to restrain trespass and remove cloud is triable by the court—residence not necessary to constitute possession—description of land, *Maggs v. Morgan* 30 W. 604.

Action may be to try title and possession by jury, *Burmeister v. Howard* 1 W. T. 208; *Meeker v. Gilbert* 3 W. T. 369.

Land appropriated to public use without consent of owner or due process may be recovered notwithstanding public use, *Grier v. City of Tacoma* 51 Fed. Rep. 622.

Assignee of application to purchase tide lands made by mortgagor prior to foreclosure after deed of lands by state may quiet title and restrain deficiency execution on mortgage, *Union Savings & L. Ass'n v. Byrne (C. C. A.)* 114 Fed. Rep. 831.

Plaintiffs sought to quiet title or enjoin defendants from interfering with their possession of Miller Lands in Columbia river which were in dispute between the states of Oregon and Washington, held not entitled to either remedy, *Kennedy v. Elliott* 85 Fed. Rep. 832.

Tenant in common may recover against stranger to tenancy, *Allen v. Higgins* 9 W. 446.

Legal title will prevail against equitable without notice, *Sengfelder v. Hill* 21 W. 371.

In action to quiet title plaintiff can not obtain forfeiture for condition subsequent, *Monat v. Seattle L. S. & E. Ry.* 16 W. 84.

Cloud may be removed though plaintiff has only equitable title, *Jackson v. Tate* 3 W. 456.

Holder of final receipt may maintain, *Pierce v. Frace* 2 W. 81.

Condemnation for right-of-way for railroad is no defense if plaintiff was not a party, *Owen v. St. Paul etc. Ry.* 12 W. 313.

Plaintiff in possession under oral agreement to have conveyance in consideration of care of grantee has cause to quiet title, *Davies v. Cheadle* 31 W. 168.

To obtain possession and remove cloud ejectment is proper remedy, with added

incident of determining the paramount title—defendant not asking affirmative relief may object to plaintiff's remedy. *Povah v. Lee* 29 W. 108.

This and following sections cited to sustain the title of a settler on the public lands against the Northern Pacific Railway, the latter locating lands subsequent to location by the settler, *Nelson v. Northern Pac. Ry. Co.*, 188 U. S. 108.

**§7518. Novation—Landlord for Tenant. §537.—537.** A defendant who is in actual possession may, for answer, plead that he is in possession only as a tenant of another, naming him and his place of residence, and thereupon the landlord, if he apply therefor, shall be made defendant in place of the tenant, and the action shall proceed in all respects as if originally commenced against him. If the landlord do not apply to be made defendant within the time the tenant is allowed to answer, thereafter he shall not be allowed to, but he shall be made defendant if the plaintiff require it. If the landlord be made defendant, on motion of the plaintiff he shall be required to appear and answer within ten days from notice of the pendency of the action and the order making him defendant, or such further notice as the court or judge thereof may prescribe.

Judgment against landlord, §7520.

Plaintiff cannot complain because agent

did not substitute principal, *O'Brien v. McKelvey* 59 W. 115.

**§7519. Superior Title Shall Prevail. §538.—538.** The plaintiff in such action shall set forth in his complaint, the nature of his estate, claim or title to the property, and the defendant may set up a legal or equitable defense to plaintiff's claims, and the superior title, whether legal or equitable, shall prevail. The property shall be described with such certainty as to enable the possession thereof to be delivered if a recovery be had.

Plaintiff must recover on own title—failure to guardian ad litem to plead affirmative defenses immaterial, *Whitaker v. Ellis*, 102 W. 43.

A complaint in ejectment need not allege seizin within the statutory time limitation, *Wilkison v. Miller* 63 W. 680.

Prior deed from common grantor superior, *Seymour v. Dufur* 53 W. 646.

Agent may plead principal's title, *O'Brien v. McKelvey* 59 W. 115.

Distributee in probate has title without deraignment to clear void tax sale, *Preston v. Cox* 50 W. 451.

Deed not set up in answer vacated, amendment not allowed—possession decreed in action to cancel deed—fraud and renunciation of trust, *Garvey v. Garvey* 52 W. 516.

Defendant failing to allege title is immaterial when plaintiff fails to show title, *George v. Columbia etc. R. Co.* 38 W. 480.

Plaintiff cannot recover on weakness of defendant's title, *Humphries v. Sorenson* 33 W. 563.

Plaintiff claimed title under lease on which he had made but part payment and had not received, held he could not recover, *Malloy v. Benway* 34 W. 315.

Title of patent grantee of the United States superior to grant to Northern Pacific Ry. declared forfeited—collateral attack of patent in ejectment, *Northern Pacific Ry. v. Miller* 20 W. 21.

State has equitable title to indemnity school lands to maintain action, *State v. Johanson* 26 W. 668.

Equitable estoppel is defense, *Moore v. Brownfield* 10 W. 439.

Parents are estopped after several years from impeaching deed by power of attorney

forged by their son, *Lynch v. Richter* 10 W. 486.

Title by legal procedure pleaded according to legal effect as in sale on execution, *Bellis v. Miller* 10 W. 259.

Tenant in possession only necessary party in ejectment, *Raymond v. Morrison* 9 W. 156.

Allegation of plaintiff's ownership sufficient, *Shannon v. Grindstaff*, 11 W. 536.

Possession must be adverse and notorious, *Carroll v. Hill Tract Imp. Co.*, 44 W. 569.

Complaint to quiet title need not allege possession, *Dueber v. Wolfe*, 47 W. 634; *Wagner v. Law*, 3 W. 500.

Seizin once shown presumed to exist until adverse possession proved, *Balch v. Smith*, 4 W. 497.

Complaint alleging possession in defendant and asking possessory relief admits such possession was adverse, *N. P. Ry. v. Spokane*, 45 W. 229.

Mortgagee cannot acquire tax title and set it up as against title of mortgagor, *Shepard v. Vincent*, 38 W. 493.

Plaintiff may amend on trial to show land is community property, *Owen v. St. Paul, etc., Ry.*, 12 W. 313.

Defendant in ejectment may set up equitable estoppel under general denial, *Parker v. Dacres*, 1 W. 190; see *Isham v. Parker*, 3 W. 761.

Equitable title sufficient defense in ejectment, *Ryan v. Ferguson*, 3 W. 356.

Seven year tax title indefeasible, *Ward v. Huggins*, 7 W. 617.

Where fence erroneously established, title must be claimed up to fence, *Stangair v. Roads*, 46 W. 613.



Statute does not run against city, Rapp v. Stratton, 41 W. 263. tiffs are not in possession, Bates v. Drake, 28 W. 447; but not that plaintiff had mis-

Answer setting up title and praying taken his remedy, Povah v. Lee, 29 W. adjudication waives objection that plain- 108.

**§7520. Answer Shall Be Specific.** §539.—539. The defendant shall not be allowed to give in evidence any estate in himself or another in the property, or any license or right to the possession thereof unless the same be pleaded in his answer. If so pleaded, the nature and duration of such estate, or license or right to the possession, shall be set forth with the certainty and particularity required in a complaint. If the defendant does not defend for the whole of the property, he shall specify for what particular part he does defend. In an action against a tenant, the judgment shall be conclusive against a landlord who has been made defendant in place of the tenant, to the same extent as if the action had been originally commenced against him.

An answer asserting no title amounts to a disclaimer and admits no evidence, So- derberg v. McRae 67 W. 104. considered as made on appeal, Brown v. Haley 56 W. 218.

General denial will not admit of proof of adverse possession—amendments not v. Higgins 9 W. 446. General denial will create no issue, Allen

**§7521. Finding of Verdict.** §540.—540. The jury by their verdict shall find as follows:

1. If the verdict be for the plaintiff, that he is entitled to the possession of the property described in the complaint, or some part thereof, or some undivided share or interest in either, and the nature and duration of his estate in such property, part thereof, or undivided share or interest in either, as the case may be.

2. If the verdict be for the defendant, that the plaintiff is not entitled to the possession of the property described in the complaint, or to such part thereof as the defendant defends for, and the estate in such property or part thereof, or license, or right to the possession of either established on the trial by the defendant, if any, in effect as the same is required to be pleaded.

Verdict must find all facts. Weidlich v. Independent Asphalt Pav. Co. 94 W. 395. Verdict not following statute sustained, Simmons v. Jamieson 32 W. 619.

**§7522. Damages—Improvements as Set Off.** §541.—541. The plaintiff shall only be entitled to recover damages for withholding the property for the term of six years next preceding the commencement of the action, and for any period that may elapse from such commencement, to the time of giving a verdict therein, exclusive of the use of permanent improvements made by the defendant. When permanent improvements have been made upon the property by the defendant, or those under whom he claims holding under color of title adversely to the claim of the plaintiff, in good faith, the value thereof at the time of trial shall be allowed as a set-off against such damages.

Purchaser at administrator's sale in fraud of minor heirs is not allowed for permanent improvements, Ball v. Clothier 34 W. 299. v. Beck 10 W. 515.

Defendant can not recover value of improvements, only set-off allowed. Sengfelder v. Hill 21 W. 371, but see, McInrey be shown, Columbia, etc., R. R. v. Histogenetic, etc., Co. 14 W. 475. Action for damages only will lie though complaint is for trespass, mesne profits or use and occupation and rental value may

**AN ACT** for the protection of occupants of land who have in good faith made permanent improvements or paid taxes or assessments thereon. General repeal. Approved March 16, 1903. Laws '03 p 262.

**§7523. Improvements a Counterclaim.** §1. In an action for the recovery of real property upon which permanent improvements have been made or general or special taxes or local assessments have been paid by a defendant, or those under whom he claims, holding in good faith under color or claim of title adversely to the claim of plaintiff, the value of such improvements and the amount of such taxes or assessments with interest thereon from date of payment must be allowed as a counter claim to the defendant.

Surviving spouse cannot claim for improvements on community property, In re Iason's Estate, 95 W. 564. made improvements, although holding not adverse parties required to do equity, People's Savings Bank v. Bufford 90 W. 204.

Defendant mistook plaintiff's lot and No allowance for betterments made

while title in U. S., *Skinner v. McCracken* 93 W. 43.

Recovery for improvements on breach of oral contract to convey, *Ernst v. Schmidt* 66 W. 452.

Claim of occupant allowed tenant in common, *Johnson v. Ingram* 63 W. 554. Judgment—entered—interest rate on

taxes paid—reversal on appeal precluded defense, *Gould v. White*, 62 W. 406.

Plaintiff should not be left in possession until lien paid—valuation, *Palmer v. Abrahams* 55 W. 352.

Statute has no retroactive effect, *Investment Co. v. Hambach* 37 W. 629; *Barton v. Wicklizer* 41 W. 293.

**§7524. Pleadings—Issues.** §2. The counter claim shall set forth the value of the land apart from the improvements, and the nature and value of the improvements apart from the land and the amount of said taxes and assessments so paid and the date of payment. Issues shall be joined and tried as in other actions, and the value of the land and the amount of said taxes and assessments apart from the improvements, and the value of the improvements apart from the land must be specifically found by the verdict of the jury, report of the referee, or findings of the court as the case may be.

**§7525. Judgment.** §3. If the judgment be in favor of the plaintiff for the recovery of the realty, and of the defendant upon the counter claim, the plaintiff shall be entitled to recover such damages as he may be found to have suffered through the withholding of the premises and waste committed thereupon by the defendant or those under whom he claims, but against this recovery shall be offset pro tanto the value of the permanent improvements and the amount of said taxes and assessments with interest found as above provided. Should the value of improvements or taxes or assessments with interest exceed the recovery for damages, the plaintiff shall, within two months, pay to the defendant the difference between the two sums and upon proof, after notice, to the defendant, that this has been done, the court shall make an order declaring that fact, and that title to the improvements is vested in him. Should the plaintiff fail to make such payment, the defendant may at any time within two months after the time limited for such payment to be made, pay to the plaintiff the value of the land apart from the improvements, and the amount of the damages awarded against him, and he thereupon shall be vested with title to the land, and, after notice to the plaintiff, the court shall make an order reciting the fact and adjudging title to be in him. Should neither party make the payment above provided, within the specified time they shall be deemed to be tenants in common of the premises, including the improvements, each holding an interest proportionate to the value of his property determined in the manner specified in section ~~two~~ hereof: Provided, That the interest of the owner of the improvements shall be the difference between the value of the improvements and the amount of damages recovered against him by the plaintiff.

**§7526. Plaintiff Must Recover Before His Right Expires—Damages.** §542.—542. If the right of the plaintiff to the possession of the property expire after the commencement of the action and before the trial, the verdict shall be given according to the fact, and judgment shall be given only for the damages.

**§7527. Order to Allow Examination of Property.** §543.—543. The court or judge thereof, on motion, and after notice to the adverse party, may, for cause shown grant, an order allowing the party applying therefor to enter upon the property in controversy and make survey and admeasurement thereof, for the purposes of the action.

**§7528. Service of Order and Entry on Premises.** §544.—544. The order shall describe the property, and a copy thereof shall be served upon the defendant, and thereupon the party may enter upon the property and make such survey and admeasurement; but if any unnecessary injury be done to the premises he shall be liable therefor.

Time in which substitution must be made in probate cases, *Mohney v. Davis*, 102 W. 158.



**§7529. Damages Against Purchaser Pending Action. §545.—545.** An action for the recovery of the possession of real property against a person in possession, cannot be prejudiced by any alienation made by such person either before or after the commencement of the action; but if such alienation be made after the commencement of the action, and the defendant do not satisfy the judgment recovered for damages for withholding the possession, such damages may be recovered by action against the purchaser.

Pendente lite purchaser takes no title though no lis pendens filed, *May v. Sutherland* 41 W. 609.

**§7530. Mortgagee Can Not Maintain Action. §546.—546.** A mortgage of real property shall not be deemed a conveyance so as to enable the owner of the mortgage to recover possession of the real property without a foreclosure and sale according to law.

Does not preclude receiver to prevent waste—receiver of mortgagor abandons property, *Collins v. Gross* 51 W. 516. Deed absolute intended as mortgage will not support ejectment, *Snyder v. Parker* 19 W. 276.

**§7531. Tenant in Common Must Show His Rights Where Denied. §547.—547.** In an action by a tenant in common, or a joint tenant of real property against his co-tenant, the plaintiff must show, in addition to his evidence of right, that the defendant either denied the plaintiff's right or did some act amounting to such denial.

**§7532. Judgment Conclusive. §549.** In an action to recover possession of real property, the judgment rendered therein shall be conclusive as to the estate in such property and the right of possession thereof, so far as the same is thereby determined, upon all persons claiming by, through, or under the party against whom the judgment is rendered, by title or interest passing after the commencement of the action, if the party in whose favor the judgment is rendered shall have filed a notice of the pendency of the action as required by [§8452.] section 4887, 2 Ballinger's Annotated Codes and Statutes of Washington. When service of the notice is made by publication, and judgment is given for failure to answer, at any time within two years from the entry thereof, the defendant or his successor in interest as to the whole or any part of the property, shall, upon application to the court or judge thereof, be entitled to an order, vacating the judgment and granting him a new trial, upon the payment of the costs of the action. L. '09 55.

Does not apply to actions to quiet title, *Bruhn v. Pasco Land Co.*, 67 W. 490.

Vacation of judgment in action to forfeit contract and quiet title is limited to one year, *Smith v. Stiles*, 68 W. 345.

Does not apply to an action to quiet title where there is no award of possession, *Smith v. Stiles*, 68 W. 345.

Action to establish lost corner defense cannot be made at any time before judgment, *Strunz v. Hood* 44 W. 99.

Provision relating to opening default applies only to actions for recovery of possession and not to action to set aside fraudulent conveyance, *Jordan v. Hutchinson* 39 W. 373.

**§7533. Restitution of Defendant on Recovery After New Trial. §550.—550.** If the plaintiff has taken possession of the property before the judgment is set aside and a new trial granted, as provided in the preceding section, such possession shall not be thereby affected in any way, and if judgment be given for defendant in the new trial, he shall be entitled to restitution by execution in the same manner as if he were plaintiff.

**§7534. Donation Titles Indefeasible—Actions on Patents of the United States—Consolidation of Actions.** §551.—551. In an action at law, for the recovery of the possession of real property, if either party claim the property as a donee of the United States and under the act of congress approved September 27th 1850, commonly called the "Donation Law," or the acts amendatory thereof, such party, from the date of his settlement thereon, as provided in said act, shall be deemed to have a legal estate in fee, in such property, to continue upon condition that he perform the conditions required by such acts, which estate is unconditional and indefeasible after the performance of such conditions. In such action, if both plaintiff and defendant claim title to the same real property by virtue of settlement under such acts, such settlement and performance of the subsequent condition shall be prima facie presumed in favor of the party having or claiming under the elder certificate, or patent, as the case may be, unless it appears upon the face of such certificate or patent that the same is absolutely void. Any person in possession, by himself or his tenant, of real property, and any private or municipal corporation in possession by itself or its tenant of any real property, or when such real property is not in the actual possession of any one, any person or private or municipal corporation claiming title to any real property under a patent from the United States, or during his or its claim of title to such real property under a patent from the United States for such real estate, may maintain a civil action against any person or persons, corporations or associations claiming an interest in said real property or any part thereof, or any right thereto adverse to him, them, or it, for the purpose of determining such claim, estate, or interest; and where several persons, or private or municipal corporations are in possession of, or claim as aforesaid, separate parcels of real property, and an adverse interest is claimed or claim made in or to any such parcels, by any other person, persons, corporations or associations, arising out of a question, conveyance, statute, grant, or other matter common to all such parcels of real estate, all or any portion of such persons or corporations so in possession, or claiming such parcel of real property may unite as plaintiffs in such suit to determine such adverse claim or interest against all persons, corporations or associations claiming such adverse interest.

Compare §7517.

Complaint insufficient under this section may be sufficient under §7517, *Crowley v. Byrne* 71 W. 444.

An allegation of ownership in fee is sufficient, *Bruhn v. Pasco Land Co.*, 67 W. 490.

Possession may be taken for purpose—plaintiff not required to plead nor prove title—former laws held repealed, *Kraus v. Congdon* 161 Fed. 18.

Action against mortgage by stranger to title, *Pacific Coast Pipe Co. v. Hedican* 61 W. 576.

Alley vacated reverting to lot held adversely subject of action, *Norton v. Cross* 52 W. 341.

Title may be cleared of invalid claim, *McGuinness v. Hargiss* 56 W. 162.

Action to quiet title by one not in possession may be maintained if no remedy at law, *Dolan v. Jones* 37 W. 176.

Answer that plaintiff foreclosed tax certificate and defendant has not since acquired interest warrants judgment for plaintiff, *Pease v. Buckley* 37 W. 182.

Defendant in possession answering waives requisite of possession in plaintiff, *Weather-Wax Lumber Co. v. Ray* 38 W. 545.

Stranger to action with lis pendens may remove lis pendens before other action determined—court directing cancellation is

cumulative, *King v. Brancheld* 32 W. 634.

Plaintiff must recover on strength of his own title, *Helm v. Johnson* 40 W. 420.

This section authorizes quieting "adverse claims", *Kalb v. German, etc., Society* 25 W. 349.

Street assessment apparently barred is cause of action—tender of tax not necessary, *Kinsman v. Spokane* 20 W. 118.

Two of wife's children claimed without right, husband has right of action—possession in plaintiff is sufficient, *Bird v. Winyer* 24 W. 269.

When neither party in possession, action may be maintained to remove cloud, and is triable without a jury, *Rorer v. Snyder* 29 W. 199.

Possession of plaintiff by contractee under agreement of sale is sufficient to maintain action to quiet title, *Bigelow v. Brewer*, 29 W. 670.

Title may be tried though the party in possession, *Smith v. Wingard* 3 W. T. 291.

Action is equitable, *Smith v. Wingard* 3 W. T. 291.

Claim of adverse party may be absolutely invalid yet there is cause of action, *Lemon v. Waterman* 2 W. T. 485.

As an attempt to affect a congressional grant this section is void, *Hershberger v. Blewett* 55 Fed. Rep. 170.



Supplementary—AN ACT prescribing the mode of maintaining and defending possessory actions on unsurveyed public lands in this state. Approved November 26, 1883. Laws '83 p 70.

**§7535. Actions to Protect Rights on Unsurveyed Lands. §1.** That any person now occupying and settled upon, or who may hereafter occupy or settle upon any of the unsurveyed public lands not to exceed 160 acres in this state, for the purpose of holding and cultivating the same, may commence and maintain any action, in any court of competent jurisdiction, for interference with or injuries done to his or her possessions of said lands, against any person or persons so interfering with or injuring such lands or possessions: Provided always, That if any of the aforesaid class of settlers are absent from their claims continuously for a period of six months in any one year, the said person or persons shall be deemed to have forfeited all rights under this act.

Section is proper subject of state legislation, *Gauthier v. Morrison* 232 U. S. 452. Territorial courts protected persons on Entryman on surveyed lands before final public domain, *Roberts v. Lucas* 1 W. proof may have action for damages, *Wendell v. Spokane County* 27 W. 121. T. 206.

Supplementary—AN ACT to quiet possessions and confirm titles to land. Approved February 16, 1893. Laws '93 p 20.

**§7536. Limitation of Action Against Record Title and Possession. §1.** That all actions brought for the recovery of any lands, tenements or hereditaments of which any person may be possessed by actual, open and notorious possession for seven successive years, having a connected title in law or equity deducible of record from this state or the United States, or from any public officer, or other person authorized by the laws of this state to sell such land for the non-payment of taxes, or from any sheriff, marshal or other person authorized to sell such land on execution or under any order, judgment or decree of any court of record, shall be brought within seven years next after possession being taken as aforesaid, but when the possessor shall acquire title after taking such possession, the limitation shall begin to run from the time of acquiring title.

Payment of taxes not conclusive but gives claim, *Hagen v. Bolcom Mills* 74 W. 462.

Where owners claim by deeds possession will not disseize, *Snell v. Stelling* 83 W. 248.

Mere possession at one time is not sufficient, *Nor. Pac. R. Co. v. Smith*, 68 W. 269.

Statute does not run against estate in remainder, *McDowell v. Beckham* 72 W. 224.

Statute includes infants, *Schlarb v. Casting* 50 W. 331.

Squatter's possession held not continuous though he paid taxes, *Johnson v.*

*Brown* 33 W. 588.

Title not acquired under sheriff's deed until grantee takes possession—where action combines quieting title and recovery of lands seven years is limitation, *Krutz v. Isaacs* 25 W. 556.

Limitation of action in tax law—equity can not be invoked—owner bringing ejectment must tender all taxes, etc.—tax deed is color of title, *Ward v. Huggins* 7 W. 617; 16 W. 530; *Merritt v. Corey* 22 W. 444.

Mere silence does not create an estoppel, *Bullene v. Garrison* 1 W. T. 587.

Cited 84 W. 39.

**§7537. Possession Inures to Successor. §2.** The heirs, devisees and assigns of the person having such title and possession shall have the same benefit of the preceding section as the person from whom the possession is derived.

**§7538. Limitation on Action Against Color Title, Possession and Payment of Taxes. §3.** Every person in actual, open and notorious possession of lands or tenements under claim and color of title, made in good faith, and who shall for seven successive years continue in possession, and shall also during said time pay all taxes legally assessed on such lands or tenements, shall be held and adjudged to be the legal owner of said lands or tenements, to the extent and according to the purport of his or her paper title. All persons holding under such possession, by purchase, devise or descent, before said seven years shall have expired, and who shall continue such possession and continue to pay the taxes as aforesaid, so as to complete the possession and payment of taxes for the term aforesaid shall be entitled to the benefit of this section.

Continued possession after writ of possession is not color, *Center v. Cady* 184 Fed. 605.

Sheriff's deed though irregular is color, *Johnson v. Bartlett* 50 W. 114.

Grantee knowing grantor is stranger to title has not color of title by quit claim deed—hauling wood from land not adverse possession — laches—quieting title, *Petticrew v. Greenshields* 61 W. 614.

Payment of taxes on part with conduct recognizing other ownership does not give title, *Miller v. O'Leary* 44 W. 172.

Void tax deed is color—lapse of seven years from first payment not required, *Lara v. Sandell* 52 W. 53.

Void guardian's deed in partition proceedings is color, *Hamilton v. Witner* 50 W. 689.

Payment by third party at defendant's request and title by doubtful purchase, held verdict properly directed for plaintiff, *McMillan v. Walker* 48 W. 342.

Payment of taxes must extend over seven years—laches of plaintiff, *Vietzen v. Otis* 46 W. 402.

There must be color of title and possession or land "vacant and unoccupied".

*Lohse v. Burch* 42 W. 156.

Remaining in possession after adverse judgment is not color of title, *Center v. Trady* 184 Fed. 605.

Possession etc. of executors does not avail their grantee against heir, *Korsstrom v. Barnes* 156 Fed. 280.

Certificate of delinquency is not color of title, *Flueck v. Pedigo* 55 W. 646.

Timber sold is not acquired by adverse possession, *Brodack v. Morsbach* 38 W. 72.

A sheriff's certificate of sale under a mortgage foreclosure is sufficient to give color of title—holding one subdivision is holding all, *Olson v. Howard* 38 W. 15.

Adverse possession without color of title as to public street is insufficient, *Port Townsend v. Lewis* 34 W. 413.

Actual paper title necessary—adverse possession, *Hesser v. Siepmann* 35 W. 14.

Mortgage foreclosure sale will set statute running—cotenant held adverse to other cotenants, *Cox v. Tompkinson* 39 W. 70.

Purchaser at void judicial sale has color of title dating from sale, *Philadelphia Mort. & Tr. Co. v. Palmer* 32 W. 455.

**§7539. Limitation on Action Against Color Title and Payment of Taxes.**  
 §4. Every person having color of title made in good faith to vacant and unoccupied land, who shall pay all taxes legally assessed thereon for seven successive years, he or she shall be deemed and adjudged to be the legal owner of said vacant and unoccupied land to the extent and according to the purport of his or her paper title. All persons holding under such taxpayer, by purchase, devise or descent, before said seven years shall have expired, and who shall continue to pay the taxes as aforesaid, so as to complete the payment of said taxes for the term aforesaid, shall be entitled to the benefit of this section: Provided, however, If any person having a better paper title to said vacant and unoccupied land shall, during the said term of seven years, pay the taxes as assessed on said land for any one or more years of said term of seven years, then and in that case such taxpayer, his heirs or assigns shall not be entitled to the benefit of this section.

Title by adverse possession of strip of land superior to record title and payment of taxes, *Alexander v. Bennett* 91 W. 688.

Payment of taxes by owner for seven years after tax deed had passed to another satisfies the statute, *Bassett v. Spokane* 93 W. 413.

*Bassett v. Spokane*, 93 W. 413, reconsidered 98 W. 654.

Taxes must be paid each successive year, *Seymour v. Dufner* 53 W. 646.

Sheriff's certificate of sale is color of title to unoccupied lands against wives

(not parties) of foreclosure defendants, *Goetter v. Morre* 53 W. 5.

Seven years is from first payment, *Tremmel v. Mess* 46 W. 137.

Alleging deed is "color of title," *Jones v. Herrick* 35 W. 434.

Code '81 limiting action to three years held a bar, *Coulter v. Stafford* 48 Fed. Rep. 266.

Void tax deed will not set statute running, *Coulter v. Stafford* (C. C. A.) 56 Fed. Rep. 564.

Cited 243 U. S. 121.

**§7540. In What Cases Limitation Does Not Apply.** §5. The two preceding sections shall not extend to lands or tenements owned by the United States or this state, nor to school lands, nor to lands held for any public purpose. Nor shall they extend to lands or tenements when there shall be an adverse title to such lands or tenements, and the holder of such adverse title is an infant or person under legal age, or insane: Provided, Such persons as aforesaid shall commence an action to recover such lands or tenements so possessed as aforesaid, within three years after the several disabilities herein enumerated shall cease to exist, and shall prosecute such action to judgment, or in case of vacant and unoccupied land shall, within the time last aforesaid, pay to the person or persons, who have paid the same for his or her betterments, and the taxes, with interest on said taxes at the legal rate per annum that have been paid on said vacant and unimproved land.



**§7541 CIVIL PROCEDURE Eminent Domain, Aerial Transportation §7541**

Infant not bringing action within three good faith, *Biggart v. Evans* 36 W. 212. years cannot impeach title for want of

**§7541. Liberal Construction of Act. §6.** That the provisions of this act shall be liberally construed for the purposes set forth in this act.

**AN ACT** limiting the time within which an action may be brought for the recovery of real estate sold by executors, administrators or guardians and determining when such sales shall be validated. Received by the Governor March 28, 1890, and became a law without his approval. Laws '90 p 81.

**§7542. Limitation of Action for Land Sold by Fiduciary. §1.** No action for the recovery of any real estate sold by an executor or an administrator under the laws of this state or the laws of the State of Washington, shall be maintained by any heir or other person claiming under the deceased, unless it is commenced within five years next after the sale; and no action for any estate sold by a guardian shall be maintained by the ward, or by any person claiming under him, unless commenced within five years next after the termination of the guardianship; except that minors, and other persons under legal disability to sue at the time when the right of action first accrued, may commence such action at any time within three years after the removal of the disability.

Heirs brought action in time — laches equitable doctrine, *Eves v. Roberts*, 96 W. 99.

Sales in administration are in rem and personal notice is not necessary even to spouse living, in sale of community realty, *Ryan v. Ferguson* 3 W. 356.

This section does not cure failure of notice to minor heir—estoppel after majority, *Ball v. Clothier* 34 W. 299.

Statement filed in extended time and brief within 90 days is good, *State v. Pearson* 37 W. 405.

Court had jurisdiction and there was no petition but notice, sale, and confirmation held sale will not be disturbed, *Ackerson v. Orchard* 7 W. 377.

This action does not protect against fraud, *Dormitzer v. German Savings etc. Society* 23 W. 132.

Statute does not cure bad description of property, *Hazelton v. Bogardus* 8 W. 102.

Order of sale for deficiency in same order as sale of mortgaged property satisfies statute, *Jones v. Seattle Brick & Tile Co.* 56 W. 166.

**§7543. Law Applies to Former Sales. §4.** This act shall apply to sales heretofore as well as hereafter made and all sales heretofore made in conformity with the provisions of this act are declared valid.

**EMINENT DOMAIN—AERIAL TRANSPORTATION.**

**AN ACT** relating to facilities for aerial transportation, authorizing cities and counties to acquire, maintain and operate lands and other property therefor, and declaring the same to be a county and city purpose and a public use. Approved February 28, 1919. L '19 ch 48.

**§7543a. Counties and Cities Authorized. §1.** That all cities and counties are authorized and empowered by and through their appropriate corporate authorities to acquire, maintain and operate sites and other facilities for landings, terminals, housing, repair and care of airplanes and seaplanes for the aerial transportation of persons, property or mail; and to acquire by purchase, condemnation or lease all lands and personal property necessary therefor; and the same is hereby declared to be a city and county purpose and a public use. Cities and counties are hereby empowered to acquire lands and other property for said purpose by the exercise of the power of eminent domain under the same procedure as is or shall be provided by law for the condemnation and appropriation of private property for any of their respective corporate uses.

**EMINENT DOMAIN—BY CITIES.**

**Supplementary—AN ACT** giving the power and regulating the mode of procedure, to acquire, take, or damage private property by municipal corporations except cities of the first class, and of ascertaining and securing compensation therefor, and repealing laws in conflict with this act. Approved March 8, 1893. General Repeal. Laws '93 p 135.

**§7544. Cities and Towns May Condemn.** §1. Municipal corporations, except cities of the first class are hereby empowered and authorized to acquire, condemn, take or damage private property for public corporate uses and for such purposes may proceed to acquire, take or damage the same, in the manner provided by chapter nine of the laws of 1890, relating to "Appropriation of lands by corporations, to regulate proceedings for," entitled "An act to regulate the mode of proceeding to appropriate lands, real estate or property, by corporations for corporate purposes, and of ascertaining and securing compensation therefor, and repealing laws in conflict with this act, and declaring an emergency," approved March 21, 1890

**AN ACT** to enable cities of the first, second, and third class and having a population of over fifteen hundred inhabitants to exercise the right of eminent domain for the taking and damaging of land and property for public purposes, providing a method for making compensation therefor, and providing for special assessments in certain cases upon property benefited. Repeal of act—Laws '05 p 84. Approved March 13, 1907. Laws '07 p 316.

**§7545. Power Granted All Cities and Towns—Purposes of Exercise.** §1. Every city and town and each unclassified city and town within the State of Washington, is hereby authorized and empowered to condemn land and property, including state, county and school lands and property for streets, avenues, alleys, highways, bridges, approaches, culverts, drains, ditches, public squares, public markets, city and town halls, jails and other public buildings, and for the opening and widening, widening and extending, altering and straightening of any street, avenue, alley or highway, and to damage any land or other property for any such purpose or for the purpose of making changes in the grade of any street, avenue, alley or highway, or for the construction of slopes or retaining walls for cuts and fills upon real property abutting on any street, avenue, alley or highway now ordered to be, or such as shall hereafter be ordered to be opened, extended, altered, straightened or graded, or for the purpose of draining swamps, marshes, tide lands, tide flats or ponds, or filling the same, within the limits of such city, and to condemn land or property, or to damage the same, either within or without the limits of such city for public parks, drives and boulevards, hospitals, pest houses, drains and sewers, garbage crematories and destructors and dumping grounds for the destruction, deposit or burial of dead animals, manure, dung, rubbish, and other offal, and for aqueducts, reservoirs, pumping stations and other structures for conveying into and through such city a supply of fresh water, and for the purpose of protecting such supply of fresh water from pollution, and to condemn land and other property and damage the same for such and for any other public use after just compensation having been first made or paid into court for the owner in the manner prescribed by this act. L. '15 446, R.&B. §7768.

Grade separation is proper exercise of power by city—cannot be delegated, *Spokane v. Spokane*, etc., R. Co. 75 W. 651.

Decision to condemn not reviewable, *In re Yesler Way* 94 W. 427.

Under L. '07 316, held, decision to condemn not reviewable—overhead viaduct and approaches authorized, *In re Yesler Way* 94 W. 427.

City made double order, improvement and change of grade assessed only for benefits for improvement, held it could later condemn and assess change of grade under §53, *Spokane v. Onstine* 86 W. 4.

Cities less than 1,500 may condemn for water system, etc., under §1214, *Redmond v. Perrigo* 84 W. 407.

Charter provision directing effort to purchase and on failure to condemn is not a limitation on the power of the city to condemn—is a public use—presumptions in favor of procedure—necessity, *Spokane v. Merriam* 80 W. 222.

City may condemn for garbage incinerators, *Hoquiam v. Lenhart* 86 W. 625.

Act does not violate due process clause of State and Federal constitutions, *In re Orcass Street*, etc., *Seattle* 87 W. 218.



Lien of assessment superior to prior liens, *Carstens & Earles v. Seattle* 84 W. 88.

Charter provision requiring effort to purchase is not limitation on power to condemn, *Spokane v. Merriam* 80 W. 222.

Waiver as to damage in regrade with verdict for \$1, does not preclude assessment for cost of improvement, *Connor v. Seattle* 82 W. 296.

Act constitutional, *Roberts v. Seattle* 63 W. 573.

Agreement to pay costs waives damages—retraction of waiver, *Seattle School Dist. v. Seattle* 63 W. 245.

City may widen street and give it to railroad, *Tacoma v. Brown* 69 W. 538.

Jury trial not necessary in assessment—expenses—unnecessary width of street—apportionment of benefits, *In re Jackson St., Seattle*, 62 W. 432.

Consolidation of actions against owner and lessee discretionary, *In re Western Avenue, Seattle* 57 W. 290.

After condemnation work may be completed under ordinance—findings not necessary on confirmation by court, *Brown v. Seattle* 57 W. 314.

Under L. '05 84 §13 total damage may be assessed and various claimants assert their rights to fund—intervention, *Seattle v. Park* 42 W. 151.

Franchise of street railway not assessable, *In re Third Avenue Seattle* 54 W. 460.

Title of act, Laws '93 189, sufficient to include opening of streets and payment of damages, *Fletcher v. Seattle* 43 W. 627.

Former act L. '93 135 complete in itself and valid—has not been superseded (1906)—agreement with owners—necessity, *State ex rel. Jones v. Superior Court* 44 W. 476.

Under L. '05 84, certiorari will not lie to review proceedings, *State ex rel. Nor. Pac. R. Co. v. Superior Court* 46 W. 303.

Abandonment of proceedings is bar to another action for purposes of lower verdict, *Northern Pac. R. Co. v. Georgetown* 50 W. 580.

Under L. '93 189, damages awarded a bar to assessments—unanimous vote of council does not estop objections, *Schuchard v. Seattle* 51 W. 41; *Barrett v. Seattle* 51 W. 47; *Seattle etc. Co. v. Seattle* 51 W. 49.

Under L. '05 84, no answer required or proper—separate juries discretionary—abutters must join in challenges, *Manhattan Bldg. Co. v. Seattle* 52 W. 226.

Proceeding under L. 93 189 in rem and only statutory parties necessary—property condemned divested of tax liens, *Gasaway v. Seattle* 52 W. 444.

City condemning under statute cannot urge its invalidity, *Smith v. Seattle* 41 W. 60.

Damages may be assessed in injunction suit when jury is called at plaintiff's request, *Swope v. Seattle* 36 W. 113.

Part of land not damaged may be assessed for benefits, *Quirk v. Seattle* 38 W. 25.

Act valid—assessment is not by the court—property benefited is contiguous—"lump" assessment to two parcels bad—special uses—general benefit to city and locality, *In re Westlake Avenue* 40 W. 144.

Party petitioning for improvement is estopped from claiming damages, *Ball v. Tacoma* 9 W. 592.

City not liable for awards if charter provides local assessment—city may plead abandonment of improvement—judgment for one claimant does not estop city as to another—assessment roll not necessary on appeal, *Seavey v. Seattle* 17 W. 361.

Cities having the power could not condemn until procedure was provided, *Tacoma v. State* 4 W. 64. Power to establish streets does not imply power to condemn, *id.*

Right to light, air and access is property to be paid for before city can build bridge in street—compensation can not be made by local assessment, *Seattle Transfer Co. v. Seattle* 27 W. 520.

Under former law benefits deducted from damages—evidence of value of land apart from buildings—market value—use—adjustment, *Seattle v. Board M. E. Church* 138 Fed. 307.

Judgment defense to injunction to stop improvement, *Compton v. Seattle* 38 W. 514.

If city does not discontinue within two months it is bound though it does not take possession—interest—rents, *State ex rel. Donofrio v. Humes* 34 W. 347.

**§7546. Damages—Assessment of Property.** §2. When the corporate authorities of any such city shall desire to condemn land or other property, or damage the same, for any purpose authorized by this act, such city shall provide therefor by ordinance, and unless such ordinance shall provide that such improvement shall be paid for wholly or in part by special assessment upon property benefited, compensation therefor shall be made from any general funds of such city applicable thereto. If such ordinance shall provide that such improvement shall be paid for wholly or in part by special assessment upon property benefited, the proceedings for the making of such special assessment shall be as hereinafter prescribed, in this act: Provided, That no special assessment shall be levied under authority of this act except when made for the purpose of streets, avenues, alleys, or highways or alterations thereof or changes of the grade therein or other improvements in or adjoining the same, or for bridges, approaches, culverts, sewers, drains, ditches, public squares, drives or boulevards or for the purpose of draining swamps, marshes, tide flats, tide lands or ponds or for filling the same; and it is further provided, That when a street, avenue, highway or boulevard is established or widened to a width greater than one hundred and fifty feet the excess over and above the one hundred and fifty feet shall be paid out of

the general fund of such city without any deduction for benefits of such excess.

In condemnation of stream for water supply upper owner cannot claim commercial use as damages, *Kirkland v. Cochran* 87 W. 528.

Court cannot fix limits of district—assessing unsettled portion to extend street for settled portion is arbitrary, *Seattle v. Puget Sound Tr. L. & P. Co.* 91 W. 567.

Indefinite ordinance and description held good against another city seeking same rights—lower riparian rights acquired, *Chehalis v. Centralia* 77 W. 673.

Benefits assessed not an element of damages, *In re Harrison Street* 74 W. 187.

Ordinance may be amended before rights vest, *In re Leary Ave.* 72 W. 617.

School district property liable, *Seattle School Dist. v. Seattle* 63 W. 245.

Offset of compensation against benefits not defeated by taking warrants—different lands, *State ex rel. Guye v. Seattle* 49 W. 41.

Right of way of railroad assessable under L. '05 84, though of no present benefit—inclusion of superior judge with commissioners in making assessment an inadvertence, *Seattle v. Seattle etc. R. Co.*

50 W. 132.

Finding of no damage by regrade in proceeding to widen does not preclude assessments for regrade, *Levy v. Seattle* 61 W. 540.

Commissioners must segregate benefits to public and property—superior court may do so on appeal, *Spokane v. Gilbert* 61 W. 361.

Finding of no damage by regrade in procedure to widen street does not preclude assessment for benefits for regrade in separate proceeding, *Levy v. Seattle* 61 W. 540.

General and local taxes a set-off against damages—failure to interpose, *State ex rel. Cook v. Fairley* 45 W. 52.

Lots of school district assessable, *In re Howard Avenue No. 44* W. 62.

Agreement by city whereby some property exempted will invalidate proceeding—collateral attack—change in plan—two plans in one ordinance—railway franchise not assessable, *In re Third etc. Avenues Seattle* 49 W. 109.

Franchise street railway not assessable, *Seattle v. Seattle Elec. Co.* 48 W. 599.

**§7547. Petition. §3.** Whenever any such ordinance shall be passed by the legislative authority of any such city for the making of any improvement authorized by this act or any other improvement that such city is authorized to make, the making of which will require that property be taken or damaged for public use, such city shall file a petition in the superior court of the county in which such land is situated, in the name of the city, praying that just compensation, to be made for the property to be taken or damaged for the improvement or purpose specified in such ordinance, be ascertained by a jury or by the court in case a jury be waived. R&B §7770: L. '13, ch. 11.

Stipulation in petition regarding assessment, *Seattle Transfer Co. v. Seattle*, 62 W. 269.

**§7548. Contents of Petition. §4.** Such petition shall contain a copy of said ordinance, certified by the clerk under the corporate seal, a reasonably accurate description of the lots, parcels of land and property which will be taken or damaged, and the names of the owners and occupants thereof and of persons having any interest therein, so far as known, to the officer filing the petition or appearing from the records in the office of the county auditor.

Trial of title by adverse possession, before condemnation, *Tacoma v. Gillespie* 82 W. 487.

Accurate description essential only in decree *Chehalis v. Centralia* 77 W. 673.

Petition need describe only land taken—no answer necessary—consequential damages—fixing value—instructions, *Tacoma v. Wetherby* 57 W. 295.

Cited 77 W. 593.

**§7549. Summons. §5.** Upon the filing of the petition aforesaid a summons, returnable as summons in other civil actions, shall be issued and served upon the person made parties defendant, together with a copy of the petition, as in other civil actions. And in case any of them are unknown or reside out of the State, a summons for publication shall issue and publication be made and return and proof thereof be made in the same manner as is or shall be provided by the laws of the State for service upon absent defendants in other civil actions. Notice so given by publication shall be sufficient to authorize the court to hear and determine the suit as though all parties had been sued by their proper names and had been personally served.

Notice not required to owners of lands W. 281.

not taken—damage for severance precludes assessment, *In re Pine Street* 83

Cited 84 W. 88.

**§7550. Public Lands. §6.** In case the land, real estate, premises or other property sought to be appropriated or damaged is State, school or county land, the summons and copy of petition shall be served on the auditor of the county in which such land, real estate, premises or other property is situated.



Service upon other parties defendant shall be made in the same manner as is or shall be provided by law for service of summons in other civil actions.

**§7551. Jury Trial.** §7. Upon the return of said summons, or as soon thereafter as the business of court will permit, the said court shall proceed to the hearing of such petition and shall impanel a jury to ascertain the just compensation to be paid for the property taken or damaged, but if any defendant or party in interest shall demand, and the court shall deem it proper, separate juries may be impaneled as to the compensation or damages to be paid to any one or more of such defendants or parties in interest.

Damages to contiguous lot not allowed, *Seattle v. Atwood* 59 W. 112.

**§7552. Findings.** §8. Such jury shall also ascertain the just compensation to be paid to any person claiming an interest in any lot, parcel of land or property which may be taken or damaged by such improvement, whether or not such person's name or such lot, parcel of land or other property is mentioned or described in such petition: Provided, Such person shall first be admitted as a party defendant to said suit by such court and shall file a statement of his interest in and description of the lot, parcel of land or other property in respect to which he claims compensation.

Elements and proof of damage, *In re Harvard Avenue No. Seattle* 47 W. 535.

*Northlake Ave.*, 96 W. 344.

Valuation of strip one foot wide between

Findings reasonably fair will not be disturbed—street railway as benefit, *In re East Galer Street* 47 W. 603.

**§7553. View by Jury.** §9. The court may upon the motion of such city or of any defendant direct that said jury (under the charge of an officer of the court and accompanied by such person or persons as may be appointed by the court to point out the property sought to be taken or damaged) shall view the lands and property affected by said improvement.

View by jury—person to conduct jury—separate findings on buildings, *In re Jackson Street* 47 W. 243.

**§7554. Damage to Buildings.** §10. If there be any building standing, in whole or in part, upon any land to be taken, the jury shall add to their finding of the value of the land taken the damages to said building. If the entire building is taken, or if the building is damaged, so that it cannot be readjusted to the premises, then the measure of damages shall be the fair market value of the building. If part of the building is taken or damaged and the building can be readjusted or replaced on the part of the land remaining, then the measure of damages shall be the cost of readjusting or moving the building, or the part thereof left, together with the depreciation in the market value of said building by reason of said readjustment or moving.

Adjustment of building to another lot is not element of damages, *Seattle v. Atwood* 59 W. 112.

Separate trial—Instructions as to damage—damage to buildings—opinion evidence of value, *Tacoma v. Bonnell* 58 W. 593.

**§7555. Separate Findings.** §11. If the land and buildings belong to different parties, or if the title to the property be divided into different interests by lease or otherwise, the damages done to each of such interests may be separately found by the jury on the request of any party. In making such findings, the jury shall first find and set forth in their verdict the total amount of the damage to said land and buildings and all premises therein, estimating the same as an entire estate and as if the same were the sole property of one owner in fee simple; and they shall then apportion the damages so found among the several parties entitled to the same, in proportion to their several interests and claims and the damages sustained by them, respectively, and set forth such apportionment in their verdict. No delay in ascertaining the amount of compensation shall be occasioned by any doubt or contest which may arise as to the ownership of the property, or any part thereof, or as to the extent of the interest of any defendant in the property to be taken or damaged, but in such case, the jury shall ascertain the entire compensation or damage that should be paid for the property and the entire interests of all the parties therein, and the court may thereafter require adverse claimants to interplead, so as to fully determine their rights and interests in the compensation so ascertained. And the court may make such order as may be necessary in regard to the deposit or payment of such compensation.

Condemnor not liable for payment to wrong party, *Carton v. Seattle*, 66 W. 447.

**§7556. Verdict—New Parties.** §12. Upon the return of the verdict the proceedings of the court regarding new trial and the entry of judgment thereon shall be the same as in other civil actions, and the judgment shall be such as the nature of the case shall require. The court shall continue or adjourn the case from time to time as to all occupants and owners named in such petition who shall not have been served with process or brought in by publication, and new summons may issue or new publication may be made at any time; and upon such occupants or owners being brought in, the court may impanel a jury to ascertain the compensation so to be made to such defendant or defendants for private property taken or damaged, and like proceedings shall be had for such purpose as herein provided.

Lump sum against owner and tenant— W. 290.  
division, In re Western Avenue Seattle 57 Cited 75 W. 116.

**§7557. Cases Not All Tried.** §13. The court shall have power at any time, upon proof that any such owner or owners named in such petition who has not been served with process has ceased to be such owner or owners since the filing of such petition, to impanel a jury and ascertain the just compensation to be made for the property (or the damage thereto) which has been owned by the person or persons so ceasing to own the same, and the court may upon any finding or findings of any jury or juries, or at any time during the course of such proceedings enter such order, rule, judgment or decree as the nature of the case may require.

**§7558. Infants or Insane Persons.** §14. When it shall appear from said petition or otherwise, at any time during the proceedings upon such petition, that any infant or insane or distracted person is interested in any property that is to be taken or damaged, the court shall appoint a guardian ad litem for such infant or insane or distracted person to appear and defend for him, her or them, and the court shall make such order or decree as it shall deem proper to protect and secure the interest of such infant or insane or distracted person in such property or the compensation which shall be awarded therefor.

**§7559. Findings—Benefits—Damages—Taxes.** §15. When the ordinance providing for any such improvement provides that compensation therefor shall be paid in whole or in part by special assessment upon property benefited, the jury or court, as the case may be, shall find separately:

1. The value of land taken at date of trial;
2. The damages which will accrue to the part remaining because of its severance from the part taken, over and above any local or special benefits arising from the proposed improvement. No lot, block, tract or parcel of land found by the court or jury to be so damaged shall be assessed for any benefits arising from such taking only;
3. The gross damages to any land or property not taken (other than damages to a remainder, by reason of its severance from the part taken), and in computing such gross damages shall not deduct any benefits from the proposed improvement. Such finding by the court or jury shall leave any lot, block, parcel or tract of land, or other property subject to assessment for its proportion of any and all local and special benefits accruing thereto by reason of said improvement.

When such ordinance does not provide for any assessment in whole or in part on property specially benefited, the compensation found for land or property taken or damaged shall be ascertained over and above any local or special benefits from the proposed improvement.

Such city or town may offset against any award of the jury or court for the taking or damaging of any lot, block, tract or parcel of land or other property, any general taxes or local assessments unpaid at the time such award is made. Such offset shall be made by deducting the amount of such unpaid taxes and assessments at the time of payment of the judgment or issuance of a warrant in payment of such judgment. L '09 723.

Lands not taken and not damaged may be assessed, Seattle v. McElwain 75 W. 375. levard 77 W. 91.

Benefits offset against damages if damages paid from general fund—benefit to follow—procedure, In re Queen Anne Rev.

Damages for severance precludes assessment, In re Pine St. 83 W. 281.

Grading and planking may be subsequently assessed, Martenis v. Tacoma, 66 W. 92.



Damages not anticipated may be afterward recovered, *Hinckley v. Seattle*, 74 W. 101.

Condemnations for benefit of railroad, the latter paying awards, benefits may be offset, *Spokane v. Thompson*, 69 W. 650.

**§7560. Final Judgment—Appeal.** §16. Any final judgment or judgments rendered by said court upon any finding or findings of any jury or juries, or upon any finding or findings of the court in case a jury be waived, shall be lawful and sufficient condemnation of the land or property to be taken, or of the right to damage the same in the manner proposed, upon the payment of the amount of such findings and all costs which shall be taxed as in other civil cases, provided that in case any defendant recovers no damages, no costs shall be taxed. Such judgment or judgments shall be final and conclusive as to the damages caused by such improvement unless appealed from, and no appeal from the same shall delay proceedings under said ordinance, if such city shall pay into court for the owners and parties interested, as directed by the court, the amount of the judgment and costs, and such city, after making such payment into court, shall be liable to such owner or owners or parties interested for the payment of any further compensation which may at any time be finally awarded to such parties so appealing in said proceeding, and his or her costs, and shall pay the same on the rendition of judgment therefor, and abide any rule or order of the court in relation to the matter in controversy. In case of an appeal to the Supreme Court of the State by any party to the proceedings the money so paid into the superior court by such city, as aforesaid, shall remain in the custody of said superior court until the final determination of the proceedings. If the owner of the land, real estate, premises, or other property accepts the sum awarded by the jury or the court, he shall be deemed thereby to have waived conclusively an appeal to the Supreme Court and final judgment may be rendered in the superior court as in other cases.

Judgment vacated and warrant holder bound—warrant not general obligation, *Barker v. Seattle*, 97 W. 511.

City not liable if award distributed to wrong persons, *Carton v. Seattle* 74 W. 375.

Provisions that appeal shall not delay and possession on payment of award do not violate Const., art. 1, §16, State ex rel. *Washington Public Service Co. v. Superior Court* 86 W. 155.

If appeal meritorious Supreme Court may stay proceedings, *In re Rainier Ave.* 80 W. 688.

Deed carries condemnation awards not paid, *in re Twelfth Ave. South* 74 W. 132; so in execution sale, *Damon v. Ryan* 74 W. 138.

Matter in judgment when not in issue presumed by consent, *Michelson v. Seattle*, 63 W. 230.

Owner at time of judgment rather than at time of verdict takes proceeds of judgment, *Yesler Logging Co. v. Seattle Elec. Co.* 74 W. 132; *Damon v. Ryan* id. 138.

City cannot appeal after paying award into court, *Spokane v. Cowles*, 67 W. 539.

**§7561. Title Vests.** §17. The court, upon proof that just compensation so found by the jury, or by the court in case the jury is waived, together with costs, has been paid to the person entitled thereto, or has been paid into court as directed by the court, shall enter an order that the city or town shall have the right at any time thereafter to take possession of or damage the property in respect to which such compensation shall have been so paid or paid into court as aforesaid, and thereupon, the title to any property so taken shall be vested in fee simple in such city or town.

Verdict for damages for joint use judgment cannot be entered for fee in favor of one using, *Seattle v. Seattle, Renton & So. R. Co.* 83 W. 94.

Title does not pass until damages paid—lien of taxes attached and is a charge on

award, *Port of Seattle v. Yesler Estate* 83 W. 166.

Ends duty to former owners, *Carton v. Seattle*, 66 W. 447.

Cited 86 W. 625.

**§7562. Payment From General Fund.** §18. When the ordinance under which said improvement is ordered to be made shall not provide that such improvement shall be made wholly by special assessment upon property benefited, the whole amount of such damage and costs, or such part thereof as shall not be assessed upon property benefited shall be paid from the general fund of such city or town, and if sufficient funds therefor are not already provided, such city or town shall levy and collect a sufficient sum therefor as part of the general taxes of such city or town, or may contract indebtedness by the issuance of bonds or warrants therefor as in other cases of internal improvements.

Where an ordinance provides that the neither the commissioners nor the court cost of a street improvement should be has power to assess the city, *Spokane v. borne* wholly by the property benefited, *Curtiss*, 66 W. 555.

**§7563. — By Special Assessment.** §19. When such ordinance under which said improvement shall be ordered, shall provide that such improvement shall be paid for, in whole or in part, by special assessment of property benefited thereby, the damages and costs awarded, or such part thereof as is to be paid by special assessment, shall be levied, assessed and collected in the manner hereinafter provided.

Lien is superior to all other prior liens— the apportionment of benefits between city and private owners, and for commissioners other liens not analagous, *Carstens & Earles v. Seattle* 84 W. 88. to act only when the council fails to do so,

Within the power of the council to make *In re Fifth Ave.*, 66 W. 327.

**§7564. Supplementary Petition—Commissioners.** §20. Such city may file in the same proceeding a supplementary petition, praying the court that an assessment be made for the purpose of raising an amount necessary to pay the compensation and damages which may or shall have been awarded for the property taken or damaged, with costs of the proceedings, or for such part thereof as the ordinance shall provide. The said court shall thereupon appoint three competent persons as commissioners to make such assessment, or if there be a board of eminent domain commissioners of such city, appointed under the provisions of this act, said proceeding for assessment shall be referred to said board. Said commissioners shall include in such assessment the compensation and damages which may or shall have been awarded for the property taken or damaged, with all costs and expenses of the proceedings incurred to the time of their appointment, or to the time when said proceeding was referred to them, together with the probable further costs and expenses of the proceedings, including therein the estimated costs of making and collecting such assessment.

Costs on appeal and interest not fits may be assessed and compensation de- included disallowed, *Spokane v. Kraft* 82 W. 238. terminated, *Spokane v. Onstine* 86 W. 4.

Costs sustained—experts—items not in- —plan must be complete—duplicity not cluded, *In re Orcas Street, etc.*, *Seattle* 87 W. 218. raised first on appeal—expenses included *In re South Shilshole Place* 61 W. 246.

Where city had changed the grade bene-

**§7565. Commissioners, Appointment.** §21. At any time after the taking effect of this act, any such city may petition the superior court of the county in which said city is situated, that a board of eminent domain commissioners be appointed to make assessments in all condemnation proceedings instituted by such city. Said superior court shall thereupon, by order duly entered in its records, appoint three competent persons as commissioners who shall be known as and who shall constitute the "board of eminent domain commissioners of the city of....." and who shall thereafter make assessments in all condemnation proceedings instituted by such city. The order of the court shall provide that one of the members of such board shall serve for one year, one for two years and one for three years, from the date of their appointment and until their successors are appointed and qualified. Annually thereafter, said superior court shall appoint one such person as such commissioner, whose term shall begin on the same day of the month on which the first order of appointment was made and continue for three years thereafter and until his successor is appointed and qualified. If any commissioner shall be disqualified in any proceeding by reason of interest, or for any other reason, said superior court shall appoint some other competent person to act in his place in such proceeding.

The only working rule is to sustain the need not be elected—assessment of lands commissioners, *Spokane v. Miles* 72 W. 571. not taken—verdict, *In re Blewett Street*, *Seattle*, 59 W. 485.

Commissioners are city officials and

**§7566. Commissioners—Oath—Pay.** §22. All commissioners before entering upon their duties shall take and subscribe an oath that they will faithfully perform the duties of the office to which they are appointed, and will to the best of their abilities make true and impartial assessments according to the law. Every commissioner shall receive compensation at the rate of five dollars per day for each day actually spent in making the assessment



herein provided for: Provided, That in any city of the first class the superior court of the county in which said city is situated may, by order duly entered in its records, fix the compensation of each commissioner in an amount in no case to exceed seven and one-half (\$7.50) dollars per day for each day actually spent in making the assessment herein provided for. Each commissioner shall file in the proceeding in which he has made such assessment his account, stating the number of days he has actually spent in said proceeding, and upon the approval of said account by the judge before whom the proceeding is pending, the comptroller or city clerk of such city shall issue a warrant in the amount approved by the judge upon the special fund created to pay the awards and costs of said proceeding, and the fees of such commissioner so paid shall be included in the cost and expenses of such proceedings. In case such commissioners are, during the same period, or parts thereof, engaged in making assessments in different proceedings, in rendering their accounts they shall apportion on them to the different proceedings in proportion to the amount of time actually spent by them on the assessment in each proceeding. L. '15 446, R.&B. §7789.

**§7567. Special Benefits—Apportionment—Assessment Districts—Leaseholds of Harbor Area Assessable.** §23. It shall be the duty of such commissioners to examine the locality where the improvement is proposed to be made and the property which will be especially benefited thereby, and to estimate what proportion, if any, of the total cost of such improvement will be a benefit to the public, and what proportion thereof will be a benefit to the property to be benefited, and apportion the same between the city and such property so that each shall bear its relative equitable proportion, and having found said amounts, to apportion and assess the amount so found to be a benefit to the property upon the several lots, blocks, tracts and parcels of land, or other property in the proportion in which they will be severally benefited by such improvement: Provided, That the legislative body of the city may in the ordinance initiating any such improvement establish an assessment district and said district when so established shall be deemed to include all the lands or other property especially benefited by the proposed improvement, and the limits of said district when so fixed shall be binding and conclusive on the said commissioners: And provided further, That no property shall be assessed a greater amount than it will be actually benefited. That all leasehold rights and interests of private persons, firms or corporations in or to harbor areas located within the corporate limits of any incorporated city or town are for the purpose of assessment for the payment of the awards, interest and costs of any improvement authorized by this act, declared to be real property, and all such leasehold rights and interests may be assessed and re-assessed in accordance with the special benefits received for the purpose of paying the cost of any such improvement heretofore made or which may hereafter be made in accordance with law. L. '15 446, R.&B. §7790.

Whether benefits will pay cost is a question in assessment and not condemnation proceeding, *Seattle v. McElwain* 75 W. 375.

Ordinance conclusive on boundaries of district but cost must be apportioned to property benefited outside—assessment cannot exceed benefits, *In re Eighth Ave. N. W.* 77 W. 570.

Court has power to apportion cost disregarding findings of commission, *In re Leary Ave.* 77 W. 399.

General benefits cannot be assessed—

benefits must refer to benefited property, damages to the damaged property, *In re Shilshole Avenue* 85 W. 522.

Only special and not general benefits are the basis of levy, *Spokane v. O.-W. R. & N. Co.* 75 W. 426.

Action of commissioners will be reviewed only for fraud etc., *In re Twelfth Ave.* 66 W. 97.

Not proper to include property that receives merely a general benefit, *In re Fifth Ave.* 66 W. 327.

**7568. Assessment Roll** §24. Such commissioners in each proceeding shall also make or cause to be made an assessment roll in which shall appear the names of the owners, so far as known, the description of each lot, block, tract or parcel of land or other property and the amounts assessed as special benefits thereto, and in which they shall set down as against the city the amount they shall have found as public benefit, if any, and certify such assessment roll to the court before which said proceeding is pending, within sixty days after their appointment or after the date of the order referring

said proceeding to them, or within such extension of said period as shall be allowed by the court.

Roll sustained though commissioners differ, In re Orcas Street Seattle 87 W. 218. Assessment when no appearance, In re Sixth Avenue West, Seattle, 59 W. 41. Cemetery liable to assessment—discretion in boundaries and benefits—part exempt segregated on appeal—raising assessment

**§7569. Hearing on Assessment.** §25. After the return of such assessment roll, the court shall make an order setting a time for the hearing thereof before the court, which day shall be at least twenty days after return of such roll. It shall be the duty of such commissioners to give notice of such assessment and of the day fixed by the court for the hearing thereof in the following manner:

1. They shall at least twenty days prior to the date fixed for the hearing on said roll, mail to each owner of the property assessed, whose name and address is known to them, a notice substantially in the following form:

"Title of Cause. To.....: Pursuant to an order of the superior court of the State of Washington, in and for the county of....., there will be a hearing in the above entitled cause on ..... at ..... upon the assessment roll prepared by the commissioners heretofore appointed by said court to assess the property specially benefited by the (here describe nature of improvement); and you are hereby required if you desire to make any objections to said assessment roll, to file your objections to the same before the date herein fixed for the hearing upon said roll, a description of your property and the amount assessed against it for the aforesaid improvement is as follows: (Description of property and amount assessed against it.)

.....  
Commissioners."

2. They shall cause at least twenty days' notice to be given by posting notice of the hearing on such assessment roll in at least three public places in such city, one of which shall be in the neighborhood of such proposed improvement, and when a daily newspaper is published in such city, by publishing the same in at least five successive issues of said paper, or if no daily newspaper is published in such city and a weekly newspaper is published therein, then in at least each issue of such weekly newspaper for two successive weeks or if no daily or weekly newspaper is published in such city, then in a newspaper published in the county in which such city is situated. Such notice so required to be posted and published, may be substantially as follows:

"Title of Cause. Special assessment notice. Notice is hereby given to all persons interested, that an assessment roll has been filed in the above entitled cause providing for the assessment upon the property benefited of the cost of (here insert brief description of improvement) and that said roll has been set down for hearing on the.....day of.....at..... The boundaries of said assessment district are substantially as follows: (here insert an approximate description of the assessment district.) All persons desiring to object to said assessment roll are required to file their objections before said date fixed for the hearing upon said roll, and appear on the day fixed for hearing before said court.

.....  
Commissioners."

Property benefited may be included though excluded by ordinance, Horton Inv. Co. v. Seattle 94 W. 556. Cited 75 W. 375; 84 W. 88.

**§7570. Proof of Service.** §26. On or before the final hearing, the affidavit of one or more of the commissioners shall be filed in said court, stating that they have sent, or caused to be sent, by mail, to the owners whose property has been assessed and whose names and addresses are known to them, the notice hereinbefore required to be sent by mail to the owners of the property assessed. They shall also cause to be filed the affidavit of the person who shall have posted the notice required by this act to be posted, setting forth when and in what manner the same was posted. Such affidavits shall be received as prima facie evidence of a compliance with this act in regard to giving such notices. They shall also file an affidavit of publication of such notice in like manner as is required in other cases of affidavits of publication of notice of summons.



**§7571. Continuance.** §27. If twenty days shall not have elapsed between the first publication or the posting of such notices and the day set for hearing, the hearing shall be continued until such time as the court shall order. The court shall retain full jurisdiction of the matter, until final judgment on the assessments, and if the notice given shall prove invalid or insufficient the court shall order new notice to be given.

**§7572. Objections.** §28. Any person interested in any property assessed may file objections to such report at any time before the day set for hearing said roll. As to all property to the assessment of which objections are not filed as herein provided, default may be entered and the assessment confirmed by the court. On the hearing, the report of such commissioners shall be competent evidence and either party may introduce such other evidence as may tend to establish the right of the matter. The hearing shall be conducted as in other cases at law, tried by the court without a jury, and if it shall appear that the property of the objector is assessed more or less than it will be benefited, or more or less than its proportionate share of the costs of the improvement, the court shall so find, and also find the amount in which said property ought to be assessed, and the judgment shall be entered accordingly.

Court reduced assessment so it would not pay for improvement—city may abandon, *In re Empire Way*, Seattle, 100 W. 636.

Expenses not included in judgment of condemnation may be objected to on confirmation, *In re Orcas Street*, etc., Seattle 87 W. 218.

Property benefited outside district credited to district, *In re Eighth Ave. N.* W. 77 W. 570.

Property owner not appealing is concluded—cannot take advantage of reversal by others, *In re West Wheeler Street* 85 W. 146; no action in equity, *Strelau v. Seattle* 85 W. 255.

Exceptions must be taken to proceed.

**§7573. Modification.** §29. The court before which any such proceedings may be pending shall have authority at any time before final judgment to modify, alter, change, annul or confirm any assessment returned as aforesaid, or cause any such assessment to be recast by the same commissioners, whenever it shall be necessary for the obtainment of justice, or may appoint other commissioners in the place of all or any of the commissioners first appointed for the purpose of making such assessment or modifying, altering, changing or recasting the same, and may take all such proceedings and make all such orders as may be necessary to make a true and just assessment of the cost of such improvement according to the principles of this act, and may from time to time, as may be necessary, continue the application for that purpose as to the whole or any part of the premises.

Cited 77 W. 399.

**§7574. Effect and Lien of Judgment.** §30. The judgment of the court shall have the effect of a separate judgment as to each tract or parcel of land or other property assessed, and any appeal from such judgment shall not invalidate or delay the judgment except as to the property concerning which the appeal is taken. Such judgment shall be a lien upon the property assessed from the date thereof until payment shall be made, and said lien shall be paramount and superior to any other lien or incumbrance whatsoever, theretofore or thereafter created, except a lien for assessments for general taxes. L '15 446, R&B §7797.

Owner not appealing concluded—cannot take advantage of reversal by others, *In re West Wheeler Street* 85 W. 146; no action in equity *Strelau v. Seattle* 85 W. 255.

Lien does not attach until judgment

ings to secure review on appeal, *In re Shilshole Avenue* 85 W. 522.

Court must keep within the issues raised by the objections, *Spokane v. Curtiss*, 66 W. 555.

Assessment may be recast as to non-contesting owners—reduction by court—inclusion of "parkways"—not authorized—in ordinance does not invalidate, *Seattle v. Sylvester-Cowen Co.* 55 W. 659.

Unplatted property assessed ten times as much as platted property set aside—trial judge should not influence assessment, *In re Everett* 61 W. 493.

Cited 75 W. 426; 77 W. 399.

grant or prior conveyance not liable on covenant against incumbrances, *Flajole v. Schulze* 80 W. 483.

Appeal is only method of relief from judgment—equity action denied *Strelau v. Seattle* 85 W. 255.

**§7575. Certifying Judgment and Assessment Roll—Acceptance by City Council of Jury Awards.** §31. The clerk of the court in which such judgment is rendered shall certify a copy of the assessment roll and judgment to the treasurer of the city, or if there has been an appeal taken from any part of such judgment, then he shall certify such part of the roll and judgment as is not included in such appeal, and the remainder when final judgment is rendered: Provided, That if upon such appeal, the judgment of the superior court shall be affirmed, the assessments on such property as to which appeal has been taken shall bear interest at the same rate and from the same date which other assessments not paid within the time hereafter provided shall bear. Such copy of the assessment roll shall describe the lots, blocks, tracts, parcels of land or other property assessed, and the respective amounts assessed on each, and shall be sufficient warrant to the city treasurer to collect the assessment therein specified. In no case, however, shall a copy of such assessment roll and judgment be certified to the city treasurer unless and until the awards of the jury shall have first been accepted by the city council or other legislative body as provided by law, or the time for rejecting the same shall have expired. L. '15 446, R.&B. §7798.

Cited 85 W. 146.

**§7576. Payment of Assessments—Notice by City Treasurer.** §32. Whenever the assessment for any such improvement shall be immediately payable, the owner of any such lot, tract or parcel of land or other property so assessed may pay such entire assessment, or any part thereof, without interest, within thirty (30) days after the notice of such assessment. The city treasurer shall, as soon as the certified copy of the assessment roll has been placed in his hands for collection, publish a notice in the official newspaper of the city for two (2) consecutive daily, or two (2) consecutive weekly issues, and then by posting four notices thereof in public places along the line of the proposed improvement, that the said roll is in his hands for collection, and that any assessment thereon, or any part thereof, may be paid within thirty (30) days from the date of the first publication or posting of said notice, without penalty, interest or costs, and if not so paid, the same shall thereupon become delinquent. L. '15 446, R.&B. §7799.

**§7577. Notice by Mail.** §33. It shall be the duty of the city treasurer into whose hands such judgment and assessment roll shall come, to mail notices of such assessment to the persons whose names appear on the assessment roll, so far as the addresses of such persons are known to him. Any such treasurer omitting so to do, shall be liable to a penalty of five dollars for every such omission; but the validity of the special assessment shall not be affected by such omission. When any assessment or assessments are paid, it shall be the duty of the treasurer to write the word "paid" opposite the same, together with the name and postoffice address of the person making the payment and the date of payment. The owner may annually notify the treasurer of his address and it shall be the duty of the treasurer to mail the notice above provided for to such address.

**§7578. Enforcement of Assessments.** §34. Whenever any assessment payable immediately shall become delinquent and whenever any instalment shall become delinquent, the city treasurer shall forthwith proceed to enforce the collection of such delinquent and unpaid assessment or instalment as in this act provided.

**Return of Assessment Roll—Warrant to Treasurer to Sell—Interest on Delinquencies.** Within fifteen days from the expiration of the time limited for the payment of any such assessments or instalments, the treasurer shall return the assessment roll to the comptroller, if there be such officer of



the city or town; otherwise, to the city or town clerk, designating thereon the assessments or instalments paid and those unpaid. The comptroller or clerk, as the case may be, shall, upon receipt of said roll, credit the treasurer with the amount of assessments or instalments collected thereon, and thereupon issue and annex to said roll a warrant directing the treasurer to sell all the property described in said roll upon which assessments are levied, whether in the name of a designated owner or in the name of an unknown owner, to satisfy all delinquent and unpaid assessments or instalments upon said roll, with costs, interest and charges. All assessments or instalments unpaid at the expiration of the time fixed herein for the payment of the same, shall bear interest at the rate of ten per cent. per annum from said date until paid. L. '15 446, R.&B. §7801.

Cited 75 W. 116.

**§7579. Law Governing Enforcement of Assessments.** §8. The collection and enforcement of such delinquent instalments shall be governed by and conform to the provisions of [[§7545] chapter 153, Session Laws of 1907, of the State of Washington, relating to the collection and enforcement of delinquent assessments, except as otherwise provided in this act.

Whenever the word "assessment" or the word "assessments" is used in said chapter 153, the same shall be held and construed to include the word "instalment" or the word "instalments." L. '15 446.

**§7580. Sale of Delinquent Property.** §35. Such warrant issued for the purpose of making sale of said delinquent property shall be deemed and taken as an execution against said property for the amount of said assessments or instalments with interest and costs, and the treasurer shall, within sixty days from the receipt thereof by him, commence the sale of said property and continue such sale from day to day thereafter, except on Sundays and legal holidays, until all the property described in said assessment roll on which any such assessment or instalment is delinquent and unpaid is sold. Such sale shall take place at the front door of the building in which the city council holds its sessions. The treasurer shall give notice of such sales by publishing a notice thereof once each week for three consecutive weeks in the official newspaper of the city, or if there be no such newspaper, then by publishing the same for said period in some newspaper published in the same county in which the city is situated, or if no such newspaper is published in such county, then in some newspaper published in the state of daily circulation in such county. Such notice shall contain a list of all property upon which such assessments or instalments are delinquent with the amount of the assessment or instalment, interest and costs to date of sale, including the cost of advertising such sale, together with the names of the owners of such property, or the words "unknown owners," as the same may appear upon said assessment roll, and shall specify the time and place of sale, and that the property therein described will be sold to satisfy the assessment or instalment, interest and costs due upon the same. All of such sales shall be made between the hours of ten o'clock a. m. and four o'clock p. m. Each lot or parcel of land or other property shall be sold separately and in the order in which the same appears on the assessment roll, commencing at the head thereof. If there be no bidder for any lot or parcel of land or other property for a sum sufficient to pay the delinquent assessment or instalment thereon, with interest and costs, the treasurer shall strike the same off to the city for the whole amount which he is required to collect by such sale. L. '15 446, R.&B. §7802.

**§7581. Part Sold From East Side of Lot.** §36. All lots and parcels of land sold for delinquent improvement assessments, shall be sold to the person at such sale offering to pay the amount due on each tract or lot for the least quantity thereof to be taken from the east side of such tract or lot, and the remainder thereof shall be discharged from the lien. After receiving the amount of the assessment, penalty, cost and charges, the treasurer shall make out a certificate, dated on the day of sale, stating (when known) the name of the owner as given on the assessment roll, a description of the land sold, the amount paid therefor, the name of the purchaser, that it was sold

for the assessment, giving the name of the street or other brief designation of the improvement for which the assessment was made, and specifying that the purchaser will be entitled to a deed in two years from the date of sale unless redemption thereof be made. Such certificate shall be signed by the treasurer, and shall be delivered to the purchaser, and shall be by such purchaser recorded in the office of the county auditor of the county in which the lands are situated within three months from the date thereof. If not recorded within said time, the lien thereof shall be postponed to claims of subsequent purchasers and incumbrances for value and in good faith who become such while the same is unrecorded.

**§7582. Sale to City.** §37. If any bidder to whom any property is stricken off at such sale does not pay the assessment, interest and costs before ten o'clock A. M. of the day following the day of such sale, such property must then be resold, or if the assessment sale is closed, be deemed to have been sold to the city or town, and a certificate of purchase shall be issued to the city therefor.

**§7583. Custodian of Certificates.** §38. The city comptroller, if there be such officer, and if not then the city or town clerk, shall be the custodian of all certificates for property sold to the city, and shall at any time within two years from the date of such certificate, and before redemption of the property therein described, sell and transfer any such certificate to any person who will pay to him the amount for which the property therein described was stricken off to the city with interest subsequently accrued, thereon, and the treasurer may, if so authorized by the council, sell and transfer any such certificate in like manner after the expiration of such two years from the date of the certificate.

**§7584. Return of Sale.** §39. Within ten days after the completion of the sale of all property described in such assessment rolls, and authorized to be sold as aforesaid, the treasurer must make return to the comptroller, or other officer by whom the warrant was issued, of said assessment roll, with a statement of his doings thereon, showing all property sold by him, to whom sold and the sum paid therefor. The city treasurer shall also within ten days after the completion of the sale of all property described in such assessment rolls transmit to the treasurer of the county in which said city is located, a statement showing all property sold by him, when sold, to whom sold and the sums paid therefor and the description of the improvement under which said sale was made. The county treasurer shall thereupon note upon the general tax rolls of said county the date of said sale, and the improvement for which the same was sold, and thereafter whenever the county treasurer shall furnish a statement of taxes to any property owner, he shall include therein a statement of such sale and the improvement for which the same was sold.

**§7585. Purchaser's Lien.** §40. The purchaser at such sale acquires a lien on the property so bid in by him for the amount paid by him at such sale as well as for all taxes and special assessments and all interest, penalties, costs and charges thereon, whether levied previously or subsequently to such sale, and whether for State, county, city, or town purposes subsequently paid by him on such property, and shall be entitled to interest at the rate of fifteen per cent. per annum on the original amount paid by him from the date of said sale and on such subsequent payments from the date of the respective payments.

Holder of certificate must pay subsequent taxes—must make personal service 44 W. 132.

If possible—Inquiry of county treasurer—

**§7586. Redemption—Deed.** §41. Every piece of property sold for an assessment shall be subject to redemption by the former owner, or his grantee, mortgagee, heir or other representative at any time within two years from the date of the sale upon payment to the treasurer for the purchaser of the amount for which the same was sold, with interest at the rate of fifteen per cent. per annum, together with all taxes and special assessments, interest, penalties and charges thereon paid by the purchaser of such



piece of property since such sale, with like interest thereon. Unless written notice of taxes and assessments subsequently paid, and the amount thereof shall be deposited with the treasurer, redemption may be made without including the same. On any such redemption being made, the treasurer shall give to the redemptioner a certificate of redemption therefor, and pay over the amount received from such redemption to the purchaser or his assigns. Should no redemption be made within said period of two years, the treasurer shall, on demand of the purchaser or his assigns, and the surrender to him of the certificate of purchase, execute to such purchaser or his assigns, a deed for the piece of property therein described: Provided, That no such deed shall be executed until the holder of such certificate of purchase shall have notified the owner of such piece of property that he holds such certificate, and that he will demand a deed therefor; and if, notwithstanding such notice, no redemption is made within sixty days from the date of the service or first publication of such notice, said holder shall be entitled to said deed. Said notice shall be given by personal service upon said persons: Provided, That in case said parties are nonresidents of the State or they cannot be found therein after diligent search, then such notice may be given by publication in a weekly newspaper published in said city once each week for three successive weeks or if no newspaper be published in said city, then publication shall be made as provided in section 25 of this act. Such notice and return thereto, with the affidavit of the person claiming such deed showing that such service was made, shall be filed with the treasurer. Such deed shall be executed only for the piece of property described in the certificate, and after payment of all subsequent taxes and special assessments thereon. The deed shall be executed in the name of the city by which the improvement is made; shall recite in substance the matters contained in the certificate, the notice to the owner, and that no redemption has been made of the property within the time allowed by law. Such deed shall be signed and acknowledged by the city treasurer as such. The deed shall be prima facie evidence that the property was assessed as required by law; that the assessment was not paid; that the property was sold as required by law; that it was not redeemed; that notice had been given, and that the person executing the deed was the proper officer; and the deed shall be conclusive evidence of the regularity of all other proceedings from the assessment, inclusive, up to the execution of the deed.

Redemption must be made within two years and within two months from date—notice by publication, *Smith v. Crandall* for deed, *State ex rel Abrashin v. Terry* 74 W. 208. Owner means real owner, not record title—*ver 89 W. 243.*

**§7587. Redemption Fund.** §42. All moneys collected by the treasurer upon assessments under this act shall be kept as a separate fund and shall be used for no other purpose than the redemption of warrants or bonds drawn or issued against the fund.

**§7588. Records Shall Be Satisfied.** §43. Whenever before the sale of any property the amount of any assessment thereon, with interest and costs accrued thereon, shall be paid to the treasurer, he shall thereupon mark the same paid, with the date of payment thereof on the assessment roll, and whenever after sale of any property for any assessments, the same shall be redeemed, he shall thereupon enter the same redeemed with the date of such redemption on such record. Such entry shall be made on the margin of the record opposite the description of such property.

**§7589. Liability of Treasurer.** §44. If the treasurer shall receive any moneys for assessments, giving a receipt therefor, for any property and afterwards return the same as unpaid, or shall receive the same after making such return, and the same be sold for assessment which has been so paid and receipted for by himself or his clerk or assistant, he and his bond shall be liable to the holder of the certificate given to the purchaser at the sale for the amount of the face of the certificate, and a penalty of fifteen per cent. additional thereto besides legal interest, to be demanded within two years from the date of the sale and recovered in any court having jurisdiction of the amount, and the city shall in no case be liable to the holder of such certificate.

**§7590. Reassessment. §45.** If any assessment be annulled or set aside by any court, or be invalid for any cause, a new assessment may be made, and return and like notice given and proceedings had as herein required in relation to the first; and all parties in interest shall have the like rights, and the city council or other legislative body, and the superior court, shall perform the like duties and have like power in relation to any subsequent assessment as are hereby given in relation to the first assessment.

Assessment annulled in part, reassessment over valid part—future use as benefit, *In re West Wheeler Street*, 97 W. 669.

**§7590a. Lien. §46.** All the assessments levied by any city under this act shall, from the date of the judgment confirming the assessment, be a lien upon the real estate upon which the same may be imposed, and such lien shall continue until such assessments are paid; if any proceedings taken for the enforcement thereof, shall be held void or invalid, such city shall provide by ordinance for new proceedings and a new sale for the enforcement thereof in like manner as hereinbefore provided; and in addition to the remedy hereinbefore provided, any city may enforce such lien by civil action in any court of competent jurisdiction in like manner and with like effect as actions for the foreclosure of mortgage.

**§7591. Issuance of Bonds. §47.** The city council or other legislative body of any city may, in their discretion, provide by ordinance for the payment of the whole or any portion of the cost and expense of any local improvement authorized by law, by bonds of the improvement district, which bonds shall be issued and sold as herein provided. L. '15 446, R.&B. §7814.

**§7592. Date of Maturity—Interest Coupons—Denominations—Signatures of Officers—Amount of Issue. §11.** Such bonds shall be issued only in pursuance of ordinances of the city directing the issuance of the same, and by their terms shall be made payable on or before a date not to exceed twelve years from and after their date, which latter date may be fixed by resolution or ordinance by council or other legislative body of said city and shall bear interest not exceeding eight per centum per annum, which interest shall be payable annually, or semi-annually, as may be provided by resolution or ordinance, and each bond shall have attached thereto interest coupons for each interest payment. Such bonds shall be in such denominations as shall be provided in the resolution or ordinance authorizing their issue and shall be numbered from one upwards, consecutively, and each bond and coupon shall be signed by the mayor and attested by the clerk or comptroller of such city: Provided, however, That said coupons may in lieu of being so signed have printed thereon a fac-simile of the signature of said officers and each bond shall have the seal of such city affixed thereto and shall refer to the improvement to pay for which the same shall be issued and to the ordinance authorizing the same. Each bond shall provide that the principal sum therein named, and the interest thereon, shall be payable out of the local improvement fund created for the payment of the cost and expense of such improvement, and not otherwise. Such bonds shall not be issued in any amount in excess of the cost and expense of the improvement. L. '15 446.

**§7593. Sale of Bonds. §12.** The bonds issued under the provisions of this act or any portion thereof may be sold by any authorized officer or officers of the city at not less than their par value and accrued interest, and the proceeds thereof shall be applied in payment of the awards, interest and costs of the improvement. L. '15 446.

**§7594. Payment of Assessment in Instalments—Proceedings Already Initiated. §13.** In all cases where any city shall issue bonds as provided for in this act, the whole or any portion of the separate assessments for any such improvement, may be paid during the thirty (30) day period provided for in section 14 of this act, and thereafter the sum remaining unpaid may be paid in equal annual instalments; the number of which instalments shall be less by two than the number of years which the bonds issued to pay for the improvements may run, with interest upon the whole unpaid sum at the bond rate, and each year thereafter one of such instalments, together with the interest due thereon and on all instalments thereafter to become



due, shall be collected in the same manner as shall be provided by law and the resolutions and ordinances of such city for the collection of assessments for such improvements in cases where no bonds are issued.

In all cases of improvements authorized in this act, where, at the time this act shall become effective, the notice by the city treasurer of the assessments for such improvement shall not have been published, the city council or other legislative body of such city may by ordinance or resolution provide for the issuance and sale of bonds for such improvement and for the payment of such assessments in instalments. L. 15 446.

**§7595. Notice of Roll—Payments—Delinquency.** §14. Whenever the assessment for any such improvement shall be payable in instalments, the owner of any lot, tract or parcel of land or other property charged with any such assessment may pay such assessment or any portion thereof, without interest, within thirty (30) days after such notice of such assessment. The city treasurer shall, as soon as the certified copy of the assessment roll has been placed in his hands for collection, publish a notice in the official newspaper of the city for two consecutive daily or two consecutive weekly issues, that the said roll is in his hands for collection and that any assessment thereon or any portion of any such assessment may be paid at any time within thirty (30) days from the date of the first publication of said notice without penalty, interest or costs, and the unpaid balance, if any, may be paid in equal annual instalments, or any such assessment may be paid at any time after the first thirty (30) days following the date of the first publication of such notice by paying the entire unpaid portion thereof with all penalties and costs attached, together with all interest thereon to the date of delinquency of the first instalment thereof next falling due. Such notice shall further state that the first instalment of such assessment shall become due and payable during the thirty (30) day period succeeding a date one (1) year after the date of first publication of such notice, and annually thereafter each succeeding instalment shall become due and payable in like manner. If the whole or any portion of any assessment remains unpaid after the first thirty (30) day period herein provided for, interest upon the whole unpaid sum shall be charged at the bond rate, and each year thereafter one (1) of said instalments, together with interest due upon the whole of the unpaid balance shall be collected. Any instalment not paid prior to the expiration of the thirty (30) day period during which such instalment is due and payable, shall thereupon become delinquent. All delinquent instalments shall, until paid, be subject to a charge for interest at the bond rate, and to an additional charge of five per cent (5%) penalty levied upon both principal and interest due on such instalment or instalments.

**Time of Issuance of Bonds—Application of Payments—Selection of Newspaper for Publication of Notice.** The bonds herein provided for shall not be issued prior to twenty (20) days after the expiration of the thirty (30) days first above mentioned, but may be issued at any time thereafter. In all cases where any sum is paid as herein provided, the same shall be paid to the city treasurer, or to the officer whose duty it is to collect said assessments, and all sums so paid shall be applied solely to the payment of the awards, interest and costs of such improvements or the redemption of the bonds issued therefor. In case any city has no official newspaper, any publication required under the provisions of this act may be made in any newspaper of general circulation published therein, or in case there be no such newspaper, then in a newspaper published in the county in which such city is located and of general circulation in such city. L. '15 446.

**§7596. Right of Bondholders.** §15. If the city shall fail, neglect or refuse to pay said bonds or to promptly collect any such assessments when due, the owner of any such bonds may proceed in his own name to collect such assessment and foreclose the lien thereof in any court of competent jurisdiction, and shall in addition to the principal of such bonds and interest thereon, recover five per centum of such sum, together with the costs of such suit. Any number of holders of such bonds for any single improvement may join as plaintiffs and any number of owners of the property on

which the same are a lien may be joined as defendants in such suit. L. '15 446.

**§7597. Remedy of Bondholder Confined to Assessments.** §16. Neither the holder nor owner of any bond issued under the authority of this act shall have any claim therefor against the city by which the same is issued, except from the special assessment made for the improvement for which such bond was issued, but his remedy in case of non-payment, shall be confined to the enforcement of such assessments. A copy of this section shall be plainly written, printed or engraved on each bond so issued. L. '15 446.

**§7598. Exchange of Bonds.** §17. Whenever any city has heretofore issued bonds for the purpose of paying the awards, interest and costs of local improvements herein authorized, such city may, with the consent of the holders of such bonds, exchange for them bonds authorized by this act. L. '15 446.

**§7599. Payment of Bond Interest—Calling in Bonds.** §18. The city treasurer shall pay the interest on the bonds authorized to be issued by this act out of the respective local improvement funds from which they are payable. Whenever there shall be sufficient money in any local improvement fund against which bonds have been issued under the provisions of this act, over and above sufficient for the payment of interest on all unpaid bonds, to pay the principal of one or more bonds, the treasurer shall call in and pay such bonds. Such bonds shall be called in and paid in their numerical order, commencing with number one. Such call shall be made by publication in the city official newspaper in its first publication following the delinquency of the instalment of the assessment or as soon thereafter as is practicable, and shall state that bonds No. .... (giving the serial numbers of the bonds called) will be paid on the day the next interest coupons on said bonds shall become due, and interest on said bonds shall cease upon such date: Provided, That in any city or town not having an official newspaper, such publication may be made in any newspaper of general circulation published therein, or in case there be no such newspaper, then in a newspaper published in the county in which such city or town is located and of general circulation in such city or town. L. '15 446.

**§7600. Partial Invalidity of Act.** §19. An adjudication of invalidity of any part of this act shall not affect the validity of the act as a whole or any part thereof. L. '15 446.

**§7601. "City" Defined.** §20. The term "city," when used in this act, means and includes every city and town and each unclassified city and town in the State of Washington. L. '15 446.

**§7602. Damages Included in Cost.** §48. If any street, avenue or alley, or the right to use and control the same for purposes of public travel, shall belong to any city and such city shall establish a grade therefor, which grade requires any cut or fill, damaging abutting property, the damages to arise from the making of such grade may be ascertained in the manner provided in this act, but such city may provide that the compensation to be made for such damage, together with the accruing costs, shall be added to the cost of the labor and material necessary for the grading thereof, and shall be paid by assessment upon the property within the local assessment district defined by law or the charter or ordinances of such city in the same manner and to the same extent as other expenses of such improvement are assessed and collected. In such cases it shall not be necessary to procure the appointment of commissioners to take the other proceedings herein provided for making such assessments, but all the proceedings for the assessment and collection of such damages and costs, shall, if so ordained by such city, be governed by the charter provisions, law or ordinances in force in such city for the assessment and collection of the costs of such improvements upon property locally benefited thereby: Provided, however, That this section shall not apply to the original grading of such street, avenue or alley. L. '09 151.



After damage done repeal of remedy contrary to 14th amendment U. S. Const., Ertor v. Tacoma 228 U. S. 148.

Fixing grade of sidewalk, higher than usual grade for sidewalk is not change of grade, Rettire v. No. Yakima 75 W. 143.

City not liable for damage by surface waters impounded by grading, Wood v. Tacoma, 66 W. 266.

City properly retracted abandonment,

Spokane v. Pittsburg Land & Imp. Co., 73 W. 693.

All actions discontinued, Ertor v. Tacoma 57 W. 50.

Dedicator of addition will not be held to have consented to grade and abutting owner must be paid, Fletcher v. Seattle 43 W. 627.

Cited 77 W. 267.

**§7603. Discontinuance of Proceedings.** §49. At any time within six months from the date of rendition of the last judgment awarding compensation for any such improvement in the superior court, or if any appeal be taken, then within two months after the final determination of the appeal in the supreme court, any such city may discontinue the proceedings by ordinance passed for that purpose before making payment or proceeding with the improvement by paying or depositing in court all taxable costs incurred by any parties to the proceedings up to the time of such discontinuance. If any such improvement be discontinued, no new proceedings shall be undertaken therefor until the expiration of one year from the date of such discontinuance. L. '15 446, R.&B. §7816.

Second ordinance abandoned held not to have repealed first ordinance, In re Western Ave. 93 W. 472.

**§7604. City May Advance Assessments and Take Possession.** §50. If any city or town shall desire to take possession of any property or do any damage or proceed with any improvement, the compensation for which is to be paid for in whole or in part by the proceeds of special assessment under this act, it may advance from its general funds, or any moneys available for the purpose, the amount of the assessments aforesaid, and pay the same to the owner or into court, as herein provided, reimbursing itself for moneys so advanced from the special assessments aforesaid. If there be no funds available for the purpose, such city may contract indebtedness for the purpose of raising funds therefor, which indebtedness shall be contracted and such proceedings taken therefor as is provided by law for indebtedness contracted for other internal improvements.

Interest chargeable on advance from warrant for damage, State ex Murray v. general fund, Spokane v. Kraft 82 W. 238. Herdlick 73 W. 301.

Mandamus will lie to compel issuance of

**§7605. Waiver of Jury—Procedure.** §51. In any proceedings under this act wherein a trial by jury is provided for, the jury may be waived as in other civil cases in courts of record in the manner prescribed by law, and the matter may be heard and determined without the intervention of a jury. Whenever an attempt is made to take private property, for a use alleged to be public under authority of this act, the question whether the contemplated use be really public shall be a judicial question and shall be determined as such by the court before inquiry is had into the question of compensation to be made. When a jury is required for the determination of any matter under this act, such jury may be the same jury summoned for the trial of ordinary civil actions before the court, or the court may, in its discretion, issue a venire to the sheriff to summon as jurors such number of qualified persons as the court shall deem sufficient. Except as herein otherwise provided, the practice and procedure under this act in the superior court and in relation to the taking of appeals and prosecution thereof, shall be the same as in other civil actions, but all appeals must be taken within thirty days from the date of rendition of the judgment appealed from. Proceedings under this act shall have precedence of all cases in court except criminal cases.

Order adjudging public use not appealable, Tacoma v. Nisqually Power Co. 43 W. 110.

54 W. 292.

Appeals limited to 30 days, Tacoma v. Birmingham Co. 50 W. 683.

Cited 86 W. 155.

Appeal governed by civil procedure and all questions considered, Puyallup v. Lacey

**§7606. Words Defined.** §52. Whenever the word "person" is used in this act the same shall be construed to include any company, corporation or association the State or any county therein and the words "city" or "town" wherever used shall be construed to be either.

**§7607. Prior Taking Cured.** §53. If any city has heretofore taken or shall hereafter take possession of any land or other property, or has damaged or shall hereafter damage the same for any of the public purposes mentioned in this act, or for any other purpose within the authority of such city or town, without having made just compensation therefor, such city or town may cause such compensation to be ascertained and paid to the persons entitled thereto by proceedings taken in accordance with the provisions of this act, and the payment of such compensation and costs as shall be adjudged in favor of the persons entitled thereto in such proceedings shall be a defense to any other action for the taking or damaging of such property.

City made double order for improvement and change of grade assessing only for improvement, later assessed for change of grade, Spokane v. Onstine 86 W. 4. Defense of res judicata properly sustained, Carpenter-McNeill Inv. Co. v. Spokane 73 W. 232. Cited 75 W. 375.

**§7608. Act Concurrent for Cities, Second Class.** §56. In so far as this act relates to cities of the second class, this act shall not be deemed to be exclusive or as repealing or superseding any existing law relative to such cities, covering any subject covered by this act, but as to such cities, this act shall be construed as conferring additional powers and additional remedies, to those now provided by law.

## EMINENT DOMAIN—BY COUNTIES.

Roads, condemnation for §7646.

Wharves authorized §7274.

**AN ACT** to grant to and prescribe powers of counties relative to public works undertaken or proposed by the State of Washington or the United States, and declaring an emergency. Approved February 12, 1895. General Repeal. Laws '95 p 3.

**§7609. Counties May Condemn for Public Works.** §1. Every county in this state is hereby, for the purposes of this act declared to be a body corporate and is authorized and empowered by and through its board of county commissioners whenever said board shall judge it to be clearly for the general welfare and benefit of the people of the county and so far as shall be in harmony with the constitution of this state and the provisions of this act, to condemn and appropriate as hereinafter in this act provided and to dispose of for public use such lands, properties, rights and interests as are hereinafter in this act mentioned whenever the government of the United States or of this state is intending or proposing the construction, operation or maintenance of any public work situated or to be situated wholly or partly within such county, or the expenditure of money or labor for the construction, operation or maintenance of any such work and such condemnation or appropriation will enable the county to aid, promote, facilitate or prepare for any such construction, operation, maintenance or expenditure by either or both such governments or to fulfill or dispose of any condition upon which such construction, operation, maintenance or expenditure is by law or from any cause contingent, and no property shall be exempt from such condemnation, appropriation or disposition by reason of the same having been or being dedicated, appropriated or otherwise reduced or held to public use.

**§7610. Tax to Pay Damages.** §2. The board of county commissioners is hereby authorized and empowered in aid of the powers granted or prescribed in the foregoing section to levy, annually a tax as large as may be necessary, but not exceeding the rate of one mill on the dollar upon all the taxable property in the county, such tax to be assessed, levied and collected at the same time and in the same manner as taxes for general county purposes, but the proceeds of said taxes, when collected, shall constitute and be a special fund applicable solely to the cost of such condemnation, appropriation or disposition as is mentioned in the foregoing section and the expenses incident thereto.

**§7611. Eminent Domain Extended to Counties.** §3. The right of eminent domain for the purposes intended in this act is hereby extended to all



counties in this state and every such county for any purpose of condemnation, appropriation or disposition such as is mentioned in the first section of this act is hereby authorized and empowered to condemn and appropriate all necessary lands and all rights, properties and interests in or appurtenant to land under the same procedure as is or shall be provided by the laws of this state for the case of any similar condemnation or appropriation by other corporations.

**§7612. Is General Debt. §4.** Any county purpose mentioned in this act shall be deemed and held to be a general county purpose and any indebtedness contracted or to be contracted therefor shall be deemed and held to be an indebtedness for general county purposes and all the provisions of law of this state relative to indebtedness for general county purposes or the contracting of such indebtedness or the bonds for funding the same shall be deemed applicable to any indebtedness contracted or to be contracted or any bonds issued by any county under this act but the accounts of the county with respect to the receipts and disbursements of all moneys received or disbursed by the county under the provisions of this act shall for each condemnation, appropriation and disposition be so kept as to clearly and fully exhibit such accounts separate and apart from the other accounts of the county.

**§7613. Use Declared to Be a County Use. §5.** Any condemnation, appropriation or disposition intended in this act shall be deemed and held to be for a county purpose and public use within the meaning of this act when it is directly or indirectly, approximately or remotely for the general benefit or welfare of the county or of the inhabitants thereof or when it is otherwise within the meaning of the phrase "for a county purpose" as occurring in the constitution of this state.

### **EMINENT DOMAIN—BY ELECTRIC COMPANIES.**

Franchises of electric companies §4635.

Supplementary—**AN ACT to extend the right of eminent domain to electric power companies, and declaring an emergency.** Approved March 11, 1895. Laws '95 p 80.

**§7614. Electric Power Companies May Condemn. §1.** The right of eminent domain is hereby extended to all corporations incorporated or that may hereafter be incorporated under the laws of this state or any state or territory of the United States and doing business in this state, for the purpose of transmitting electric power by wire, cable or by any other means: Provided, however, That said right of eminent domain shall not be exercised in respect to any residence or business structure or structures.

**§7615. Preliminary Survey. §2.** Every corporation incorporated or that may hereafter be incorporated under the laws of this state or any state or territory of the United States and doing business in this state, for the purpose of transmitting electric power by wire, cable or any other means, shall have the right to enter upon any land between the termini of the proposed lines for the purpose of examining, locating and surveying such lines, doing no unnecessary damage thereby.

Court may determine whether the specific land sought is necessary. *Spokane Portland Cement Co. v. Larson*, State ex 71 W.

**§7616. The Usual Procedure. §3.** Every such corporation shall have the right, subject to the proviso contained in section one hereof, to appropriate real estate or other property for right-of-way or for any corporate purposes in the same manner and under the same procedure as now is or may be hereafter provided by law in the case of other corporations authorized by the laws of this state to exercise the right of eminent domain.

**AN ACT relating to the exercise of the power of eminent domain by corporations generating and transmitting electricity and using and selling the same for light and power.** Approved March 13 1907... L. '07 p 349.

**§7617. Electric Companies, Disposal of Product.** §1. Any corporation authorized to do business in this State, which, under the present laws of the State, is authorized to condemn property for the purpose of generating and transmitting electrical power for the operation of railroads or railways, or for municipal lighting, and which by its charter or articles of incorporation, assumes the additional right to sell electric power and electric light to private consumers outside the limits of a municipality and to sell electric power to private consumers within the limits of a municipality, which shall provide in its articles that in respect of the purposes mentioned in this section it will assume and undertake to the State and to the inhabitants thereof the duties and obligations of a public service corporation, shall be deemed to be in respect of such purposes a public service corporation, and shall be held to all the duties, obligations and control, which by law are or may be imposed upon public service corporations. Any such corporation shall have the right to sell electric light outside the limits of a municipality and electric power both inside and outside such limits to private consumers from the electricity generated and transmitted by it for public purposes and not needed by it therefor: Provided, That such corporation shall furnish such excess power at equal rates, quantity and conditions considered, to all consumers alike, and shall supply it to the first applicants therefor until the amount available shall be exhausted: Provided, further, That no such corporation shall be obliged to furnish such excess power to any one consumer to an amount exceeding twenty-five per cent of the total amount of such excess power generated or transmitted by it. In exercising the power of eminent domain for public purposes it shall not be an objection thereto that a portion of the electric current generated will be applied to private purposes, provided the principal uses intended are public: Provided, That all public service or quasi-public service corporations shall at no time sell, deliver and dispose of electrical power in bulk to manufacturing concerns at the expense of its public service functions, and any person, firm or corporation that is a patron of such corporation as to such public function, shall have the right to apply to any court of competent jurisdiction to correct any violation of the provisions of this act.

Does not limit right of corporation State ex rel. Dominick v. Superior Court whose objects are both public and private, 52 W. 196.

State ex rel, Lyle Co. v. Court, 70 W. 486. Private purposes cannot be brought

Power to be sold to others for public within the act by offer to do public serv-  
purposes is public use—law seeking to in- ice, State ex rel. Tolt Power Co. v. Super-  
clude private purpose does not invalidate. for Court 50 W. 13.

**§7618. Must Be Applied to Public Use.** §2. Whenever any corporation has acquired any property by decree of appropriation, based on proceedings in court under the provisions of this act, no portion of the electricity generated or transmitted by it by means of the property appropriated under the provisions of this act shall be used or applied by such corporation for or to a business or trade not under the present laws deemed public or quasi-public conducted by itself.

**§7619. Violation of Act.** §3. In the event of the violation of any of the requirements of this act by any corporation availing itself of its provisions, an appropriate suit may be maintained in the name of State upon the relation of the Attorney General, or if he shall refuse or neglect to act upon the relation of any individual aggrieved by the violation, or violations, complained of, to compel such corporation to comply with the requirements of this act. A violation of this act shall cause the forfeiture of the corporate franchise if the corporation refuses or neglects to comply with the orders with respect thereto made in the suit herein provided for.

**Supplementary—AN ACT** extending the right of eminent domain to electric power and electric railroad companies, and declaring an emergency.

Approved March 13, 1899. Laws '99 p 147.

**§7620. Electric Railways May Condemn.** §1. The right of eminent domain is hereby extended to all corporations incorporated or that may hereafter be incorporated under the laws of this state or any state or territory of



the United States and doing business in this state for the purpose of transmitting electric power by wire, cable or by any other means; or for operating railways or railroads by electric power: Provided however, That said right of eminent domain shall not be exercised with respect to any residence or business structure or structures public road or street.

Rights of way on roads and streets— This act vests right to condemn, State eminent domain—lease or purchase if ex rel. Smith v. Superior Court 30 W. 219. other lines, Act '03 §4638.

**§7621. Preliminary Survey. §2.** Every such corporation shall have the right to enter upon any land between the termini of the proposed lines for the purpose of examining, locating and surveying such lines, doing no unnecessary damage thereby.

**§7622. The Usual Procedure. §3.** Every such corporation shall have the right subject to the proviso contained in section 1 hereof, to appropriate real estate or other property for right-of-way or for any corporate purposes in the same manner and under the same procedure as now is, or may hereafter be provided by law in the case of other corporations authorized by the laws of this state to exercise the right of eminent domain.

### **EMINENT DOMAIN—MINING, ETC., PURPOSES.**

Supplementary—AN ACT to extend the right of eminent domain to mining, milling or reduction works companies. Approved March 11, 1897. Laws '97 p 95.

**§7623. Reduction Companies May Condemn. §1.** The right of eminent domain is hereby extended to all corporations incorporated or that may hereafter be incorporated under the laws of this state or any state or territory of the United States, and doing business in this state, for the purpose of acquiring, owning or operating mines, mills or reduction works or mining or milling gold and silver or other minerals, which may desire to erect and operate surface tramways or elevated cable tramways for the purpose of carrying, conveying or transporting the products of such mines, mills or reduction works.

**§7624. Preliminary Survey. §2.** Every corporation incorporated or that may hereafter be incorporated under the laws of this state or any state or territory of the United States, and doing business in this state, for the purpose of acquiring, owning or operating mines, mills or reduction works or mining or milling gold and silver or other minerals, which may desire to erect and operate surface tramways or elevated cable tramways for the purpose of carrying, conveying or transporting the products of such mines, mills or reduction works, shall have the right to enter upon any land between the termini of the proposed lines for the purpose of examining, locating and surveying such lines, doing no unnecessary damage thereby.

**§7625. The Usual Procedure. §3.** Every such corporation shall have the right to appropriate real estate or other property for right-of-way in the same manner and under the same procedure as now is or may be hereafter provided by the law in the case of other corporations authorized by the laws of this state to exercise the right of eminent domain.

### **EMINENT DOMAIN—PRIVATE CORPORATIONS.**

Corporations When Authorized to Appropriate Land for Corporate Purposes.

**§7626. Preliminary Survey—State Lands. §2455.** A corporation organized for the construction of any railway, macadamized road, plank road, clay road, canal or bridge shall have a right to enter upon any land, real estate or premises or any of the lands granted to the State of Washington for school, university or other purposes between the termini thereof, for the purpose of examining, locating and surveying the line of such road or canal, or the site of such bridge, doing no unnecessary damage thereby. L. '95 146.

Procedure in the exercise of the right of eminent domain, §7646.

Right of way by appraisal, §7673.

Does not authorize taking of public street without franchise—road company franchise may be taken—power of city, State ex rel. Schade Brg. Co. v. Superior Court 62 W. 96.

Procedure, etc., in eminent domain, §7646.

Maps of location and witnesses in evidence—road as element of damages—care in blasting in quarry adjoining Portland etc. R. Co. v. Clarke County, 48 W. 509.

Filing and marking of location of boom on tide lands does not make a valid appropriation, Samish Boom Co. v. Calivert

Tide lands held under contract from the state may be condemned—company having leased road leasing company may condemn, State ex rel. Trimble v. Superior Court 31 W. 445.

One railroad may condemn part of another's right of way not in use—certiorari will lie to review condemnation cases in superior court, Seattle & Montana Ry. v. Bellingham Bay etc. Ry. 29 W. 491.

Without authority state land could not be condemned, Seattle & Montana Ry. Co. v. State 7 W. 150.

Special charter railroads may condemn, Cascades Co. v. Sohns 1 W. T. 558.

**§7627. Corporations—Purposes.** §2456. Every corporation organized for the construction of any railway, macadamized road, plank road, clay road, canal or bridge, is hereby authorized and empowered to appropriate, by condemnation, land and any interest in land or contract right relating thereto, including any leasehold interest therein and any rights-of-way for tunnels beneath the surface of the land, and any elevated rights-of-way above the surface thereof, including lands granted to the State for university, school or other purposes, and also tide and shore lands belonging to the State (but not including harbor areas), which may be necessary for the line of such road, railway or canal, or site of such bridge, not exceeding two hundred feet in width, besides a sufficient quantity thereof for tool houses, workshops, materials for construction, excavations and embankments and a right-of-way over adjacent lands or property, to enable such corporation to construct and prepare its road, railway, canal or bridge, and to make proper drains; and in case of a canal, whenever the court shall deem it necessary, to appropriate a sufficient quantity of land, including lands granted to the State for university, school or other purposes, in addition to that before specified in this section, for the construction and excavation of such canal and of the slopes and berms thereof, not exceeding one thousand feet in total width; and in case of a railway to appropriate a sufficient quantity of any such land, including lands granted to the State for university, schools and other purposes and also tide and shore lands belonging to the State (but not including harbor areas), in addition to that before specified in this section, for the necessary side tracks, depots and water stations, and the right to conduct water thereto by aqueduct, and for yards, terminal, transfer and switching grounds, docks and warehouses required for receiving, delivering, storage and handling of freight and such land or any interest therein as may be necessary for the security and safety of the public in the construction, maintenance and operation of its railway; compensation therefor to be made to the owner thereof irrespective of any benefit from any improvement proposed by such corporation, in the manner provided by law: And provided, further, That if such corporation locate the bed of such railway or canal upon any part of the track now occupied by any established State or county road, said corporation shall be responsible to the county commissioners of said county or counties in which such State or county road so appropriated is located, for all expenses incurred by such county or counties in relocating and opening the part of such road so appropriated. The term land as herein used includes tide and shore lands but not harbor areas; it also includes any interest in land or contract right relating thereto, including any leasehold interest therein. L '07 674, '03 383.

"Docks" means space between for landing, State ex Patterson v. Court, 102 W. 331.

Injunction will not lie to restrain use of land by public service corporation—remedy at law, Irwin v. J. K. Lumber Co., 102 W. 99.

Harbor areas and waterways across same, whether in use or not, not subject to condemnation—default by city, state may appear, State v. Superior Court 91 W. 454.

Negligence cannot be predicated on mere

construction of railroad on highway—blowing whistle frightening horse Engelsen v. Spokane, etc., R. Co. 79 W. 39.

Corporation acquires needed interest only, Neltzel v. Spokane I. R. Co., 65 W. 100.

Railroad may condemn lands for new depot, State ex rel. Nor. Pac. Ry v. Superior Court, 68 W. 397.

Harbor areas may be leased for railroad purposes, State ex rel. Hulme v. Grays Harbor etc. R. Co. 54 W. 530.



Terminal railway proceeding with work have showing of public use—way of other road condemned, State ex rel. Milwaukee etc. Co. v. Superior Court 54 W. 365.

Testimony of engineer in charge sustains necessity and public use, State ex rel. True v. Superior Court 56 W. 249.

Allegation that railroad will be common carrier is allegation of public use—private business does not defeat—federal consent to bridge not condition precedent—laches—length of line—stock must be subscribed—stockholders other railroads, State ex rel. McIntosh v. Superior Court 56 W. 214.

Railroad may condemn part of right of way of another, there being enough for both, State ex rel. Everett etc. Co. v. Superior Court 59 W. 598.

Full title condemned, plans of condemnor immaterial—value of land for different purposes, Portland etc. R. Co. v. Skamania Boom Co. 59 W. 191.

Preference right to lease harbor area is an "interest in land" and subject, State ex rel. Wilson v. Grays Harbor etc. R. Co. 60 W. 32.

Two corporations condemning the one prior in time is prior in right, State ex rel. Cascade etc. Corp. v. Superior Court 53 W. 321.

Harbor areas and tide lands—damage to

preference right to purchase—subscription to stock precedent—waiver State ex rel. Hulme v. Grays Harbor etc. R. Co. 54 W. 530.

Valuation to be made at time of trial, Grays Harbor etc. R. Co. v. Kauppinen 53 W. 238.

Stock subscription by stenographer—necessity of condemnation by one road of another is question of fact, State ex rel. Northern Pac. R. Co. v. Superior Court 49 W. 390.

Railroad may condemn way across boom site—relative public uses—seeking agreement, State ex rel. Skamania Boom Co. v. Superior Court 47 W. 166.

Boom company may condemn the property of another—necessity—priorities, Samish River Boom Co. v. Union Boom Co. 32 W. 586.

Railroad denied the right to condemn the terminals of another, State ex rel. Spokane Falls & N. Ry. v. Superior Court 40 W. 389.

Light and power company not authorized, State ex rel. Tacoma Industrial Co. v. White River Power Co. 39 W. 648.

Action for damages for taking county road cannot be had until road is relocated, Weymouth v. Port Townsend etc. R. R. Co. 6 W. 575.

Cited 83 W. 322.

**§7628. Road and Canal Companies Shall Unite.** §2456 $\frac{1}{4}$ . Every corporation formed under this chapter for the construction of a railroad shall have the power to cross, intersect, join and unite its railway with any other railway before constructed, at any point in its route, and upon the grounds of such other railway company, with the necessary turn-outs, sidings, switches, and other conveniences in furtherance of the objects of its connections, and every corporation whose railway is or shall be hereafter intersected by any new railway shall unite with the corporation owning such new railway in forming such intersections and connections, and grant the facilities aforesaid; and if the two corporations cannot agree upon the amount of compensation to be made therefor, or the points and manner of such crossings and connections, the same shall be ascertained and determined in the manner provided by law for the taking of lands and other property which shall be necessary for the construction of its road, and every corporation formed under this chapter for the construction of a canal shall have the power to cross and intersect any railway, before constructed at any point in its road and upon the grounds of such other railway company, and every corporation whose railway is or shall hereafter be crossed or intersected by any canal shall unite with the corporation owning such canal in forming such crossings and intersections and grant the facilities therefor, and if the two corporations cannot agree upon the compensation to be made therefor, or the points and manner of such crossings and connections, the same shall be ascertained and determined in the manner provided by law for the taking of lands and other property which shall be necessary for the construction of said canal. L '95 146.

The right to condemn a crossing over another carries the right to a particular crossing; and the court may provide that condemnor build and maintain an overhead crossing for defendant, State ex rel. Union Lumber Co. v. Court, 70 W. 540.

Terminal grounds cannot be condemned where other route though at greater cost,

State ex rel. Portland etc. R. Co. v. Superior Court 45 W. 270.

Private logging railroad subject—city may agree to use of pole line right of way—crossings—protection of city water supply, State ex rel. Kent Lum. Co. v. Superior Court 46 W. 516.

**§7629. Feasible Route on Roads and Rivers.** §2456 $\frac{3}{4}$ . Every corporation formed under the laws of this state for the construction of railroads or canals shall possess the power to construct its railway or canal as the case may be, across, along, or upon any river, stream of water, watercourses, plank road, turnpike, or canal, which the route of such railway or canal shall intersect or touch; but such corporation shall restore the river, stream, watercourse, plank road, or turnpike thus intersected or touched to its former state as near as may be, and pay any damages caused by such construction:

Provided, That the construction of any railway or canal, by such corporation along, across, or upon any of the navigable rivers or waters of this state shall be in such manner as to not interfere with, impede, or obstruct the navigation thereof; and all rights, privileges and powers of every description by law conferred upon road or railroad companies are hereby given and granted to canal companies so far as the same may be applicable, and all power and authority possessed by the public or municipal corporations of the state or their local authorities, with reference to road or railroad companies may be exercised by them with reference to canal companies. L. '95 148.

Railroad not interfering with river owner 54 W. 530.  
is not liable for damage by prior owner, U. S. grant of right of way not conclusive that all is necessary—statute U. S. requiring common usage through defile Bachman v. Oregon-Wash. R. & N. Co. 88 W. 81. does not exempt payment—common usage, North Coast R. Co. v. Northern Pac. R. Co. 48 W. 529.

Federal lawsuit not necessary before tide lands condemned for approaches, State ex rel. Hulme v. Grays Harbor etc. R. Co. 48 W. 529.

§7630. **Change of Route.** §2457.—37. Any corporation may change the grade or location of its road, or canal, not departing from the general route specified in the article of incorporation, for the purpose of avoiding annoyances to public travel or dangerous or deficient curves or grades, or unsafe or unsubstantial grounds or foundation, or for other like reasonable causes, and for the accomplishment of such change, shall have the same right to enter upon, examine, survey, and appropriate the necessary lands and materials, as in the original location and construction of such road or canal.

Act constitutional, title sufficient, State in its location to correct an error in engineering, State ex rel. Sylvester v. Court, 64 W. 594.  
ex rel. Great Northern Ry. v. Superior Court, 68 W. 572.

A railroad company may make a change

§7631. **Route Across County Property.** §2458.—38. When it shall be necessary or convenient in the location of any road herein mentioned to appropriate any part of any public road, street or alley, or public grounds, the county court of the county wherein such road, street, alley or public grounds may be, unless the same be within the corporate limits of a municipal corporation, is authorized to agree with the corporation constructing the road, upon the extent, terms and conditions upon which the same may be appropriated or used, and occupied by such corporation, and if such parties shall be unable to agree thereon, such corporation may appropriate so much thereof as may be necessary and convenient in the location and construction of said road.

Street cannot be but road company State ex rel. Atkinson v. Dunlap 49 W. 385.  
franchise may be condemned—power of Collusion to establish road for purpose of disposal to railroad not shown, State ex rel. Murhard Estate Co. v. Superior Court Brg. Co. v. Superior Court 62 W. 96. County commissioners may sell road, 49 W. 392.

§7632. **Town May Designate Route.** §2459.—39. Whenever a private corporation is authorized to appropriate any public highway or grounds, as mentioned in the last section, if the same be within the limits of any town, whether incorporated or not, such corporation shall not locate their road upon such particular road, street or alley or public grounds, within such town, as the local authorities mentioned in the last section and having charge thereof, shall designate; but if such local authorities shall fail or refuse to make such designation within a reasonable time, when requested, such corporation may make such appropriation without reference thereto.

City may grant perpetual franchise or that it did not have authority as territorial one defeasible if it enforces default, but it city to grant it Seattle v. Columbia etc. can not change grade to destroy it nor say R. R. Co. 6 W. 379.

§7633. **Toll Gates By Agreement.** §2460.—40. Whenever such public highway or grounds is taken by a private corporation by agreement with the local authorities mentioned in section four [§2458], such corporation may place such gates thereon, and charge and receive such tolls thereat as such local authorities may consent to by such agreement, and none other; but when the same is appropriated without such agreement, as provided in said section five, such corporation shall not place any gate or other obstruction upon the public highway, or grounds appropriated, nor charge or receive any toll from any person passing over or along the same.



**§7634. Requisites of Toll Roads.** §2461.—41. Any road other than a railroad, constructed by a corporation formed under this act, shall be cleared of standing timber for thirty feet in width of said road, and shall have a track in the center not less than sixteen feet wide, finished and kept in good traveling condition, except when the cutting on said road is six feet or more deep on either side, in which case such track need not be more than ten feet wide, with turnouts of sixteen feet in width for every quarter of a mile of such narrow track.

**§7635. Bridges and Ferries Over Streams.** §2462.—42. All streams or other waters upon the line of such roads, shall be safely and securely bridged, except where the county court of the county wherein the line of such road may cross such streams or other waters; or if such stream or other water form the boundary between two counties, then the county court of either of said counties may authorize the corporation to place a ferry boat upon such stream or other water, to be kept and run for such toll as the county court may prescribe, and in the manner required of ferries established under the general statutes in relation to ferries; or except where such county court may authorize such corporation to connect their road with a ferry now or hereafter established over such stream or other water under the general statute in relation to ferries.

**§7636. Notice of Opening Toll Road.** §2463.—43. Whenever a road of any kind herein mentioned, other than a railroad, is completed, or any particular section of it, fit for public travel, the corporation shall give notice thereof, by publication in some newspaper of general circulation, along the line of such road or section, or by posting notices along such line in some conspicuous places, not less than five miles apart; and thereafter such road or section thereof is a common highway, so that every person with his stock and vehicles of every description may travel thereon upon the payment of the tolls prescribed by the corporation, subject to the power of the corporation, by giving notice thereof in like manner, to suspend such right of travel upon all or any portion of such road, for a reasonable time, to enable it to make any necessary repairs or improvements thereon.

**§7637. Tolls to Be Posted.** §2464.—44. A corporation other than railroad shall only collect and receive toll on its road at a gate established thereon, and such shall be plainly and specifically printed or written upon a signboard, posted at such gate, in plain view of the travel on the road; but such corporation shall not establish any gate within the limits of any town, whether incorporated or not, or within one-half mile of the limits of such town, except as specially provided in section 2460; but no person, traveling on foot, or going in any manner or within any property, from one part of his farm to another part, or going to or from church, funerals or elections, is liable to pay for traveling upon such roads.

**§7638. Fraud on Keeper.** §2465.—45. Any person traveling upon any road herein mentioned, who shall pass through a gate thereon without paying the toll legally chargeable thereat, or who shall go around such gate with the intent to avoid the payment of such toll, shall be liable to the corporation for three times the amount thereof, and any corporation, which by its agents or servants, or in any manner, shall illegally collect any toll from any person traveling on such roads, shall be liable to such person for three times the amount thereof.

**§7639. Notice of Opening Bridge.** §2466.—46. Any bridge constructed by a corporation formed under this act, when completed and fit for public travel, and notice thereof is posted in some conspicuous place on such bridge or by publication in some newspaper, as in the case of a road, is a common highway, within the meaning and subject to the conditions specified in section nine [§2463], as to roads, and subject to the further power of the corporation to prescribe, by advertisement in some conspicuous place on such bridge, the rate of speed any one may travel on such bridge.

**\$7640. Tolls to Be Posted. §2467.—47.** A corporation may collect and receive such tolls for crossing its bridge, as may be plainly written or printed upon a signboard, posted in some conspicuous place on such bridge, but no person not liable to pay toll on a road, as provided in section ten [§2464], is liable to pay toll for crossing such bridge; and any person who shall pass over such bridge without paying the toll legally chargeable thereat, or any corporation which shall illegally collect any toll from any persons crossing such bridge, shall be respectively liable to each other for three times the amount of such toll, as provided in section eleven [§2465], in case of roads.

**\$7641. Railroad Rates. §2468.—48.** Every corporation formed under this act for the construction of railroads, as to such roads shall be deemed common carriers, and shall have power to collect and receive such tolls or freights for transportation of persons or property thereon as it may prescribe.

**\$7642. Toll Road Shall Keep Construction Account. §2469.—49.** It shall be the duty of every incorporation organized for the construction of any macadamized road, plank road, clay road, or bridge, to keep an accurate statement on account of the moneys expended by said corporation, in the construction of any such road or bridge and keeping the same in repair, including any sums paid for lands, appropriated as necessary for said corporation, which statement or account shall be verified at the time of the annual meeting held for the election of directors, by the president of the said corporation, or one of the directors thereof, to the effect that he believes the said account to be just and correct, and a copy of such verified account shall, within ten days after such annual election, be deposited with the auditor of the county with whom the articles of incorporation are filed. Said incorporation shall also keep an accurate account of the tolls received for traveling upon said road or bridge, or of other profits accruing to said corporation, which accounts shall be verified in like manner, and a copy thereof deposited with said county auditor within ten days after such annual election.

**\$7643. County May Purchase. §2470.—50.** At any time after the expiration of ten years from the time of taking tolls on any macadamized road, plank road, clay road, or bridge, it shall be lawful for the county court of any county through which any such road, or part thereof, shall pass or in which said bridge may be situated, to pay to such corporation the amount of money expended by it in the construction of such road or bridge, and keeping the same in repair, and all other necessary expenses, including any sums paid for lands appropriated by such corporation together with interest on said account, and sums of money, at the rate of twenty per centum per annum, after deducting from said amount the tolls and other profits annually received by said corporation, and after the payment of the amounts expended in constructing and keeping in repairs said road or bridge, and other necessary expenses incurred in and about the same and interest thereon, less the amount received by such corporation, the said road or bridge shall become free for public travel.

**\$7644. — At Any Time. §2471.—51.** The foregoing section shall not be construed so as to prohibit said county court, at any time before the expiration of said period of ten years, from purchasing said road or bridge, for any sum that may be agreed upon by said county court and corporation.

**\$7645. Canal Companies May Condemn. §2472.—52.** All corporations, authorized to do business in the state, and who have been, or may hereafter be organized, for the purpose of erecting and maintaining flumes or aqueducts to convey water for consumption or for mining, irrigation, milling or other industrial purposes, shall have the same right to appropriate lands for necessary corporate purposes, and under the same regulations and instructions as are provided for other corporations; and such corporations organized for such purposes, in order to carry out the object of their incorporation, are authorized to take and use any water not otherwise legally appropriated.

A corporation organized for the purpose of creating a water storage reservoir, State ex rel. Golden Valley of Irrigation may condemn land for a storage reservoir. Co. v. Superior Court, 67 W. 556.



# EMINENT DOMAIN—BY PRIVATE CORPORATIONS. PROCEDURE.

Substitute—AN ACT to regulate the mode of proceeding to appropriate lands, real estate or other property, by corporations for corporate purposes, and of ascertaining and securing compensation therefor, and repealing laws in conflict with this act, and declaring an emergency. Approved March 21, 1890. Former laws repealed. Existing proceedings saved. Laws '90 p 294.

**§7646. Private Corporation May Condemn.** §1. Any corporation authorized by law to appropriate land, real estate, premises or other property for right-of-way, or any other corporate purposes, may present to the superior court of the county in which any land, real estate, premises or other property sought to be appropriated shall be situated, or to the judge of such superior court in any county where he has jurisdiction or is holding court, a petition in which the land, real estate, premises or other property sought to be appropriated, shall be described with reasonable certainty, and setting forth the name of each and every owner, incumbrancer or other person or party interested in the same, or any part thereof, so far as the same can be ascertained from the public records, the object for which the land is sought to be appropriated, and praying that a jury be impaneled to ascertain and determine the compensation to be made in money, irrespective of any benefit from any improvement proposed by such corporation, to such owner or owners, respectively, and to all tenants, incumbrancers and others interested, for the taking or injuriously affecting such lands, real estate, premises or other property, or in case a jury be waived as in other civil cases in courts of record in the manner prescribed by law, then that the compensation to be made as aforesaid be ascertained and determined by the court, or judge thereof.

N. Co. v. Wilkinson, 188 Fed. 363.

General description of abutters reversion in vacated street insufficient, State ex. Patterson v. Court 102 W. 331.

Counties have power for rights of way for roads §6000; quarries §5980; road materials §6001.

Logging companies have power §4695.

Private ways §6185.

Roads, turnpike §6215.

State roads, for rights of way §6786.

Object of appropriation may be shown by amendment of pleading, Oregon-W. R. & N. Co. v. Wilkinson 188 Fed. 363.

County may offset benefits of road—measure of damages, King County v. Crawford & Conover 92 W. 195.

Cities of fourth, etc., classes may condemn for water system under this act, Redmond v. Perrigo 84 W. 407.

All parties need not necessarily be served in the first instance since they have hearing in the award—lessees with leases not recorded must recover from award not petitioner, State ex rel. Long v. Superior Court 80 W. 417.

Condemnation may include purposes of old line of railroad with new, State ex Flint v. Court, 69 W. 300.

Condemnation cannot be had for same use, State ex Harbor Co. v. Court, 65 W. 129.

Terminal company 1100 feet in length may condemn, State ex Bremer v. Court, 69 W. 278.

Failure to allege object of appropriation not fatal defect—other lands available no defense—date of condemnation—superior use to another railroad, Oregon, etc., R. &

What corporations may exercise, §7626 and notes—maps showing location in explanation of evidence—damage confined to present taking Portland & Seattle R. Co. v. Ladd 47 W. 88.

Current of water as element of damages in condemnation, Inland Empire R. Co. v. McKinley 48 W. 675.

Description of property in petition of boom company held sufficient, State ex rel. Burrows v. Superior Court 48 W. 277.

Description of land required held sufficient, State ex rel. Oregon R. & N. Co. v. Superior Court 45 W. 321.

Water company cannot condemn state school lands to procure water for domestic purposes, State ex rel. Atty. Gen'l v. Superior Court 36 W. 381.

Before possession proceedings may be abandoned even after appeal, Port Angeles Pacific R. Co. v. Cooke 38 W. 184.

If property has been taken, owner may maintain trespass, Downs v. Seattle etc. Co. 5 W. 778.

Construction of former law, Laws '88 p 58, 14 W. 144; 2 W. 376, 500; 4 W. 311; C. '81 §2473, 1 W. 491; 2 W. 378.

Petitioner has right to open and close—proof of value and damage, Seattle and Montana Ry. v. Gilchrist 4 W. 509.

Valuation in parcels—measure of damages—\$80,000 for railroad right of way through Chuckanut stone quarry, Seattle & Montana Ry v. Roeder 30 W. 244.

Person in possession regardless of record title should be made party—estoppel, Owen v. St. Paul etc. Ry. 12 W. 313.

Cited 243 U. S. 251.

**§7647. Service of Summons.** §2. A notice stating briefly the objects of the petition, and containing a description of the land, real estate, premises

or property sought to be appropriated and stating the time and place, when and where the same will be presented to the court, or the judge thereof, shall be served on each and every person named therein, as owner, incumbrancer, tenant or otherwise interested therein, at least ten days previous to the time designated in such notice, for the presentation of such petition. Such service shall be made by delivering a copy of such notice to each of the persons or parties so named therein, if a resident of the state, or in case of the absence of such person or party from his or her usual place of abode, by leaving a copy of such notice at his or her usual place of abode, or in case of a foreign corporation at its principal place of business in this state with some person of more than sixteen years of age. In case of domestic corporations such service shall be made upon the president, secretary or other director or trustee of such corporation. In case of minors, on their guardians, or in case no guardian shall have been appointed, then on the person who has the care and custody of such minor; in case of idiots, lunatics or distracted persons, on their guardian, or in case no guardian shall have been appointed, then on the person in whose care or charge they are found. In case the land, real estate, premises, or other property sought to be appropriated is state, school or county land, the notice shall be served on the auditor of the county in which the land, real estate, premises or other property sought to be appropriated is situated. In all cases where the owner or person claiming an interest in such real or other property is a non-resident of this state, or where the residence of such owner or person is unknown, and an affidavit of the agent or attorney of the corporation shall be filed that such owner or person is a non-resident of this state, or that after diligent inquiry, his residence is unknown or can not be ascertained by such deponent, service may be made by publication thereof in any newspaper published in the county where such land is situated, once a week for two successive weeks; and in case no newspaper is published in said county, then such publication may be had in a newspaper published in the county nearest to the county in which lies the land sought to be appropriated. And such publication shall be deemed service upon each of such non-resident person or persons whose residence is unknown. Such notice shall be signed by the president, manager, secretary or attorney of the corporation; and in case the proceedings provided for in this act are instituted by the owner or any other person or party interested in the land, real estate, or other property sought to be appropriated, then such notice shall be signed by such owner, person or party interested, or his, her or its attorney. Such notice may be served by any competent person over twenty-one years of age. Due proof of the service of such notice by affidavit of the person serving the same, or by the printer's affidavit of publication, shall be filed with the clerk of such superior court before or at the time of the presentation of such petition. Want of service of such notice shall render the subsequent proceedings void as to the person not served, but all persons or parties having been served with notice as herein provided, either by publication or otherwise, shall be bound by the subsequent proceedings. In all other cases not otherwise provided for, service of notices, orders and other papers in the proceedings authorized by this act, may be made as the superior court or the judge thereof may direct.

Mortgagees and lien claimants etc. are proper parties—if not made parties are to share in damages—apportionment *North Coast R. Co. v. Hess* 56 W. 335; affirmed, *Gray v. Davison* 78 W. 482. *terurban R. Co. v. Connelly* 48 W. 515.

Affidavit for service by publication by agent of corporation need not negative knowledge by any other agent etc. of corporation—search sustained, *Moynahan v. Superior Court* 42 W. 172. In cases of default plaintiff responsible for procedure as in selection of jury, *Oregon R. & N. Co. v. McCormick* 46 W. 45.

Failure to serve all interested parties will not defeat proceedings as to those served, *State ex rel. Trimble v. Superior Court* 31 W. 445.

Lienors entitled to share damages on interest in the land being taken, *Yakima Water etc. Co. v. Hathaway* 18 W. 377.

Proof of service amended, *Spokane In-*

**Supplementary—AN ACT providing for making owners or claimants to be made parties to proceedings for the appropriation of property to public use. Approved March 20, 1895. Laws '95 p 352.**



**§7648. How Lienors Made Parties in Condemnation Proceedings. §1.** If a party having or claiming a share or interest in or lien upon any property sought to be appropriated for public use be unknown, and such fact be made to appear by affidavit filed in the office of the clerk of the court, the notice required by law in such cases may be served by publication as in the case of non-resident owners and such notice shall be directed by name to every owner of a share or interest in or lien upon the property sought to be so appropriated and generally to all persons unknown having or claiming an interest or estate in the property or any portion thereof and all such unknown parties shall in all papers and proceedings be designated as "unknown owners" and shall be bound by the provisions and be entitled to the benefits of the judgment the same as if they had been known and duly named.

**§7649. Continuance. §3.** The court or judge may, upon application of the petitioner, or of any owner or party interested, for reasonable cause adjourn the proceedings from time to time, and may order new or further notice to be given to any party whose interest may be affected.

Intervening public service corporation *L. & P. Co. v. Tumwater P. & W. Co.* 55 dismissed, its remedy is certiorari, *Olmpl* W. 392.

**§7650. Jury Shall Be Summoned. §4.** At the time and place appointed for hearing said petition, or to which the same may have been adjourned, if the court or judge thereof shall have satisfactory proof that all parties interested in the land, real estate, premises or other property, described in said petition, have been duly served with said notice as above prescribed, and shall be further satisfied by competent proof that the contemplated use for which the land, real estate, premises or other property sought to be appropriated is really a public use, or is for a private use for a private way of necessity, and that the public interest requires the prosecution of such enterprise or the private use is for a private way of necessity, and that the land, real estate, premises or other property sought to be appropriated are required and necessary for the purposes of such enterprise, the court or judge thereof may make an order, to be recorded in the minutes of said court, directing the sheriff to summon from the citizens of the county in which any land, real estate, premises or other property sought to be appropriated shall be situated, as many qualified persons as may be necessary in order to form a jury of twelve persons, unless the parties to the proceedings consent to a less number (such number to be not less than three), and such consent shall be entered by the clerk in the minutes of the trial. If necessary to complete the jury, the sheriff, under direction of the court or judge thereof, shall summon as many qualified persons as may be required to complete the jury from the bystanders, citizens of the county where the land, real estate, premises or other property is situated. L. '97 63.

485, 491.

Finding of public necessity held sufficient in condemnation by water company—condemnation of another water company or log drive camp any (overruling 94 W. 691), *State ex South Fork L. D. Co. v. Court*, 102 W. 460.

Company owning property less convenient will not deter condemnation, *State ex Patterson v. Court*, 102 W. 331.

Reviewed only by certiorari—time, *State ex Grays Harbor, etc. Co. v. Court* 100 W.

Comparative use, one corporation seeking to condemn property, etc., of another, *State ex rel. Union Tr. & S. Bank v. Superior Court* 84 W. 20.

There is no appeal on preliminary questions, certiorari remedy, *Seattle, Port Angeles & L. C. R. Co. v. Land* 81 W. 206.

Bringing of suit is a sufficient showing of the adoption of a particular plan, *State ex rel. Weyerhaeuser Co. v. Court* 71 W. 84.

Irrigation ditch is a public use. *Prescott Irrigation Co. v. Flathers* 20 W. 454.

**§7651. Assessment of Damages—Judgment. §5.** A judge of the superior court shall preside at the trial which shall be held at such time as the court, or the judge thereof, may direct, at the court house in the county where the land, real estate, premises or other property sought to be appropriated is situated, and the jurors at such trial, shall make in each case a separate assessment of damages which shall result to any person, corporation or company, or to the state, or to any county by reason of the appropriation and use of such land, real estate, premises or other property by such corporation as aforesaid for any and all corporate purposes, and shall ascertain, determine and award the amount of damages to be paid to said owner or owners respectively, and to all tenants, incumbrancers and others interested, for the taking or injuriously affecting such land, real estate, premises or other property for the purpose of such enterprise, irrespective of any benefit from any im-

provement proposed by such corporation. Upon the trial witnesses may be examined in behalf of either party to the proceedings as in civil actions, and a witness served with a subpoena in such proceedings shall be punished for failure to appear at such trial, or for perjury as upon a trial of a civil action. Upon the verdict of the jury, judgment shall be entered for the amount of the damages awarded to such owner or owners respectively, and to all tenants, incumbrancers and others interested, for the taking or injuriously affecting such land, real estate, premises or other property. In case a jury is waived as in civil cases in courts of record in the manner prescribed by law, the compensation to be paid for the property sought to be appropriated shall be ascertained and determined by the court, or the judge thereof, and the proceedings shall be the same as in trials of an issue of fact by the court.

Destroying access to highway is element of damages—damage to farm, State ex rel. Puget Sound, etc., R. Co. v. Foster 84 W. 75.

County may offset benefit of county road, King County v. Crawford & Conover 92 W. 195.

Offers for land not admissible, North Coast R. Co. v. Newman, 66 W. 374.

Damage to leasehold—measure—renewals, North Coast R. Co. v. Kraft Co., 63 W. 250.

If condemnation by city benefits may be offset, Spokane v. Thompson, 69 W. 651.

Condemnor has reasonable time to elect to take or abandon—interest North Coast R. Co. v. Aumiller 61 W. 271.

Owner's disposition to dispose of land not to be considered—price paid for other property immaterial—election to take property after assessment of damages, Port Townsend etc. R. Co. v. Barbare 46 W. 275.

Probable future or speculative damages not admissible—offers and price at which other lands held not admissible, Chicago R. Co. v. Alexander 47 W. 131.

Proper present expense of crossings but not future expense of other crossings, State ex rel. North Coast Ry. v. Northern

Pac. R. Co. 49 W. 78.

May be required to at once elect to take property and pay damages or not, State ex rel. Port Townsend So. R. Co. v. Superior Court 44 W. 554.

Plaintiff entitled to open and close—answer made though none required does not shift burden of proof—fence required as item of damage—defendant may show any adaptability of land, Seattle etc. Ry. Co. v. Murphine 4 W. 448.

Damages recoverable by lessee, Seattle & Montana Ry. v. Scheike 3 W. 625.

If possession is had and improvements made prior to condemnation such are not elements of damages Seattle & M. Ry. v. Corbett 22 W. 189.

Damage to lands not adjacent by increased expense in floating logs can not be considered—damages assessed for construction of dam does not include damage to riparian rights—after court has adjudged use public evidence of other use can not be given, Sultan W. & P. Co. v. Weyerhaeuser Timber Co. 31 W. 558.

How damages ascertained under former law Oregon Ry. & N. Co. v. Owsly 3 W. T. 38.

**§7652. Damages Paid, Judgment Shall Be Entered.** §6. At the time of rendering judgment for damages, whether upon default or trial, if the damages awarded be then paid, or upon their payment, if not paid at the time of rendering such judgment, the court or judge thereof, shall also enter a judgment or decree of appropriation of the land, real estate, premises, right-of-way, or other property sought to be appropriated, thereby vesting the legal title to the same in the corporation seeking to appropriate such land; real estate, premises, right-of-way, or other property for corporate purposes. Whenever said judgment or decree of appropriation shall affect lands, real estate, or other premises, a certified copy of such judgment or decree of appropriation may be filed for record in the office of the auditor of the county where the said land, real estate, or other premises are situated, and shall be recorded by said auditor like a deed of real estate, and with like effect. If the title to said land, real estate, premises, or other property attempted to be acquired is found to be defective from any cause, the corporation may again institute proceedings to acquire the same, as in this chapter provided. L. '91 84.

Abandonment of proceedings sustained on the facts, State ex Moore v. Court 100 W. 481.

Title vests when money paid—abandonment—taxes, North Coast Ry. v. Gentry, 73 W.

Lease for private purpose forfeits condemned rights, Neitzel v. Spokane I. R. Co., 65 W. 100.

Corporation acquires only such qualified interest as it needed for public use, Neitzel v. Spokane I. R. Co., 65 W. 100.

**§7653. Damages May Be Paid Into Court.** §7. Upon the entry of judgment upon the verdict of the jury or the decision of the court, or judge thereof, awarding damages as hereinbefore prescribed, the petitioners or any officer of, or other person duly appointed by said corporation, may make payment of the damages assessed to the parties entitled to the same and of the costs



of the proceedings, by depositing the same with the clerk of said superior court, to be paid out under the direction of the court, or judge thereof; and upon making such payment into the court of the damages, assessed and allowed, and of the costs, to any land, real estate, premises or other property mentioned in said petition, such corporation shall be released and discharged from any and all further liability therefor, unless upon appeal the owner or other person or party interested shall recover a greater amount of damages; and in that case only for the amount in excess of the sum paid into said court and the costs of appeal: Provided, That in case of an appeal to the supreme court of the state by any party to the proceedings, the money so paid into the superior court by such corporation as aforesaid shall remain in the custody of said court until the final determination of the proceedings by the supreme court.

Persons not made parties in first instance may make claim to award and this their day in court, *State ex rel. Long v. Superior Court* 80 W. 417.

Petitioner not obliged to hunt out true

owner, *Carton v. Seattle*, 66 W. 447.

Payment of award into court vests title, *Silverstone v. Harn*, 66 W. 440.

Costs cannot be taxed against owner in lower court but may on appeal, *Kitsap County v. Melker* 52 W. 49.

**\$7654. — Claim for. §8.** Any person, corporation, state or county claiming to be entitled to any money paid into court, as provided in this act, may apply to the court therefor, and upon furnishing evidence satisfactory to the court that he or it is entitled to the same, the court shall make an order directing the payment to such claimant the portion of such money as he or it shall be found entitled to; but if, upon application the court, or judge thereof, shall decide that the title to the land, real estate, premises or other property specified in the application of such claimant was in such condition as to require that an action be commenced to determine the conflicting claims thereto, he shall refuse such order until such action is commenced, and the conflicting claims to such land, real estate, premises or other property be determined according to law.

**\$7655. Appeal. §9.** Either party may appeal from the judgment for damages entered in the superior court to the supreme court of the state within thirty days after the entry of judgment as aforesaid, and such appeal shall bring before the supreme court the propriety and justness of the amount of damages in respect to the parties to the appeal: Provided however, That no bond shall be required of any person interested in the property sought to be appropriated by such corporation, but in case the corporation appropriating such land, real estate, premises or other property is appellant, it shall give a bond like that prescribed in the next following section, to be executed, filed and approved in the same manner: And provided further, That if the owner of the land, real estate, premises or other property accepts the sum awarded by the jury, the court, or the judge thereof, he shall be deemed thereby to have waived conclusively an appeal to the supreme court, and final judgment by default may be rendered in the superior court as in other cases. L. '90 294.

Appeal only on damages, *State ex Grays Harbor etc. Co. v. Court* 100 W. 485.

Appeal on damages though others combined—award accepted, no appeal, *Chicago, M. & St. P. R. Co. v. Slosser* 82 W. 467.

Certiorari is only remedy for review of preliminary questions, *Seattle, Port Angeles & L. C. R. Co. v. Land* 81 W. 206.

A jury's award of damages will not be disturbed on appeal where it is supported by substantial evidence, *C., M. & P. S. Ry. v. Thayer*, 65 W. 402.

Limitation on questions reviewable construed, *State ex rel. McCormick v. Superior Court* 43 W. 91.

Certiorari limited to thirty days, *State ex rel. Alexander v. Superior Court* 42 W. 684.

Title of amendatory act, L. '01 213, defective 46 W. 35.

General law regulating appeals not applicable—amount of damages only question

that can be raised on appeal—constitution providing for appellate jurisdiction not self-executing there remaining the necessity for procedure, *Western American Co. v. St. Ann Co.* 22 W. 158.

Provisions not repealed by later general act, *Seattle etc. Ry. Co. v. O'Meara* 4 W. 17; "may appeal" means must appeal, *id.*

Prohibition will not lie to prevent superior court from proceeding, only demurrer having been interposed because order overruling demurrer is not applicable, *Parker v. Superior Court* 25 W. 544; certiorari will not lie, *id.*; affirmed 26 W. 702.

Act amending §9 is void because subject not expressed in title—although there is appeal mandamus will issue to compel superior court to proceed, *State ex rel. Seattle Electric Co. v. Superior Court* 28 W. 317.

Cited 86 W. 155.

**§7656. Appeal Shall Not Delay Work.** §10. The construction of any railway surface tramway, elevated cable tramway, or canal, or the prosecution of any works or improvements, by any corporation as aforesaid, shall not be hindered, delayed or prevented by the prosecution of the appeal of any party to the proceedings: Provided, The corporation aforesaid shall execute and file with the clerk of the court in which the appeal is pending, a bond to be approved by said clerk, with sufficient sureties, conditioned that the persons executing the same shall pay whatever amount may be required by the judgment of the court therein, and abide any rule or order of the court in relation to the matter in controversy. L. '97 63.

Giving of bond does not preclude abandonment of proceedings, Port Angeles Pacific R. Co. v. Cooke 38 W. 184.

**§7657. One Railroad May Condemn Right Over Another Through Defile.** §12. Any railroad company whose right-of-way passes through any canon, pass or defile, shall not prevent any other railroad company from the use and occupancy of said canon, pass or defile, for the purpose of its road in common with the road first located or the crossing of other railroads at grade; and any railroad company authorized by law to appropriate land, real estate, premises, or other property for right-of-way or any other corporate purpose may present a petition in the manner and form hereinbefore provided, for the appropriation of a right-of-way through any canon, pass, or defile, for the purpose of its road where right-of-way has already been located, condemned or occupied by some other railroad company through such canon, pass or defile, for the purpose of its road; and thereupon like proceedings shall be had upon such petition as herein provided in other cases, and at the time of rendering judgment for damages whether upon default or trial the court or judge thereof shall enter a judgment or decree authorizing said railroad company to occupy and use said right-of-way, road-bed and track, if necessary, in common with the railroad company or companies already occupying or owning the same, and defining the terms and conditions upon which the same shall be so occupied and used in common. Cited 77 W. 315.

### EMINENT DOMAIN—PRIVATE WAYS.

Private ways of necessity §6178.

**AN ACT** relating to the taking of private property for private ways of necessity and for drains, flumes and ditches on or across the lands of others for agricultural, domestic or sanitary purposes. Approved March 20, 1913. Laws '13, ch. 133.

**§7658. Private Ways of Necessity—Logging, Etc.—Ways.** §1. An owner, or one entitled to the beneficial use, of land which is so situate with respect to the land of another that it is necessary for its proper use and enjoyment to have and maintain a private way of necessity or to construct and maintain any drain, flume or ditch, on, across, over or through the land of such other, for agricultural, domestic or sanitary purposes, may condemn and take lands of such other sufficient in area for the construction and maintenance of such private way of necessity, or for the construction and maintenance of such drain, flume or ditch, as the case may be. The term "private way of necessity," as used in this act, shall mean and include a right of way on, across, over or through the land of another for means of ingress and egress, and the construction and maintenance thereon of roads, logging roads, flumes, canals, ditches, tunnels, tramways and other structures upon, over and through which timber, stone, minerals or other valuable materials and products may be transported and carried.

Writ of error to supreme court dismissed because judgment interlocutory, Grays Harbor Co. v. Coats, Fordney Co. 243 U. S. 251.

Petition for logging road showed large quantity of timber—private interest immaterial—control of route—petitioner must pay costs on appeal though successful, State ex rel. Clear Lake L. R. Co. v. Superior Court 83 W. 445.

One having lease prior to law may condemn, State ex rel Preston Mill Co. v. Su-

perior Court 91 W. 249.

Act valid—right of eminent domain not derived from constitution—"necessary private ways" for general welfare is due process of law, State ex rel Mountain Timber Co. v. Superior Court 77 W. 585.

Conclusiveness of route selected—change of route—part of tracts having service—is due process of law, State ex rel. Grays Harbor L. Co. v. Superior Court 82 W. 503.



**§7659. Procedure in Condemnation.** §2. The procedure for the condemnation of land for a private way of necessity or for drains, flumes or ditches under the provisions of this act shall be the same as that [§7646.] provided for the condemnation of private property by railroad companies, but no private property shall be taken or damaged until the compensation to be made therefor shall have been ascertained and paid as provided in the case of condemnation by railroad companies.

**§7660. Common Carrier—Rates.** §3. That any person or corporation availing themselves of the provisions of this act for the purpose of acquiring a right-of-way for a logging road, as a condition precedent, contract and agree to carry and convey over such roads to either termini thereof any of the timber or other produce of the lands through which such right is acquired at any and all times, so long as said road is maintained and operated, and at reasonable prices; and a failure so to do shall terminate such right-of-way. The reasonableness of the rate shall be subject to determination by the public service commission.

### EMINENT DOMAIN—BY STATE.

Rights of way for state roads §6786; road materials §6804.

**AN ACT** to regulate the mode of proceeding to acquire and appropriate land, real estate and other property for public uses of the State of Washington, and prescribing the method of ascertaining and making compensation therefor, and declaring an emergency. Approved March 3, 1891. Laws '91 p 138.

**§7661. State May Condemn.** §1. Whenever any officer, board, commission, or other body representing the state is authorized by the legislature to acquire any land, real estate, premises, or other property deemed necessary for the public uses of the state, or any department or institution thereof, and the officer, board, commission or other body whose duty it is to acquire such land, real estate, premises, or other property is unable to agree with the owner or owners thereof for its purchase, it shall be the duty of the attorney general to present to the superior court of the county in which said land, real estate, premises, or other property so sought to be acquired or appropriated shall be situated, a petition in which the land, real estate, premises, or other property sought to be appropriated shall be described with reasonable certainty, and setting forth the name of each and every owner, encumbrancer, or other person or party interested in the same, or any part thereof, so far as the same can be ascertained from the public records, the object for which the land is sought to be appropriated, and praying that a jury be impaneled to ascertain and determine the compensation to be made in money to such owner or owners, respectively, and to all tenants, incumbrancers, and others interested, for taking such lands, real estate, premises, or other property, or in case a jury be waived, as in other civil cases in courts of record, in the manner prescribed by law, then that the compensation to be made as aforesaid be ascertained and determined by the court or judge thereof. L. '11 335.

**Decree may define uses and damages follow—measure of damages—separate damages to each owner, Olympia L. & P. Co. v. Harris 58 W. 410.**

**If additional burden is subsequently imposed party entitled to additional damages, Spokane v. Colby 16 W. 610.**

**Owner of lot peculiarly damaged by appropriation of street for private railroad**

**switch is entitled to damages, Patton v. Olympia Door etc. Co. 15 W. 210.**

**This act and not civil practice applies to exercise of eminent domain by the United States and court can not set aside verdict of jury on ground of excessive damages, United States v. Tennant 93 Fed. Rep. 613; affirmed, United States v. Freeman (C. C. A.) 113 Fed. Rep. 370.**

**§7662. Service of Notice.** §2. A notice, stating briefly the objects of the petition, and containing a description of the land, real estate, premises or property sought to be acquired and appropriated, and stating the time and place, when and where the same will be presented to the court, or the judge thereof, shall be served on each and every person named therein as owner, incumbrancer, tenant or otherwise interested therein, at least ten days

previous to the time designated in such notice for the presentation of such petition. Such service shall be made by delivering a copy of such notice to each of the persons or parties so named therein, if a resident of the state; or, in case of the absence of such person or party from his or her usual place of abode, by leaving a copy of such notice at his or her usual place of abode; or, in case of a foreign corporation, at its principal place of business in this state, with some person of more than sixteen years of age. In case of domestic corporations, such service shall be made upon the president, secretary or other director or trustee of such corporation. In case of minors, on their guardians, or in case no guardian shall have been appointed then on the person who has the care and custody of such minor; in case of idiots, lunatics or distracted persons, on their guardians, or in case no guardian shall have been appointed, then on the person in whose care or charge they are found. In case the land, real estate, premises or other property sought to be appropriated is school or county land, the notice shall be served on the auditor of the county in which the land, real estate, premises or other property sought to be acquired and appropriated is situated. In all cases where the owner or person claiming an interest in such real estate or other property, is a non-resident of this state, or where the residence of such owner or person is unknown, and an affidavit of the attorney general shall be filed that such owner or person is a non-resident of this state, or that after diligent inquiry his residence is unknown or cannot be ascertained, service may be made by publication thereof in any newspaper published in the county where such lands are situated once a week for two successive weeks; and in case no newspaper is published in said county, then such publication may be had in a newspaper published in the county nearest the county in which lies the land sought to be acquired and appropriated. And such publication shall be deemed service upon each of such non-resident person or persons whose residence is unknown. Such notice shall be signed by the attorney general of the State of Washington. Such notice may be served by any competent person over twenty-one years of age. Due proof of the service of such notice by affidavit of the person serving the same, or by the printer's affidavit of publication, shall be filed with the clerk of such superior court before or at the time of the presentation of such petition. Want of service of such notice shall render the subsequent proceedings void as to the person not served, but all persons or parties having been served with notice as herein provided, either by publication or otherwise shall be bound by the subsequent proceedings. In all other cases not otherwise provided for, service of notices, order and other papers in the proceedings authorized by this act may be made as the superior court or judge thereof may direct.

**§7663. Continuance.** §3. The court or judge may, upon application of the said attorney general, or any owner or party interested, for reasonable cause, adjourn the proceedings from time to time, and may order new or further notice to be given to any party whose interest may be affected.

**§7664. Hearing.** §4. At the time and place appointed for hearing said petition, or to which the same may have been adjourned, if the court or judge thereof shall have satisfactory proof that all parties interested in the land, real estate, premises or other property, described in said petition, have been duly served with said notice as above prescribed, and shall be further satisfied by competent proof that the contemplated use for which the land, real estate, premises or other property sought to be appropriated is really necessary for the public use of the State of Washington, the court or judge thereof may make an order, to be recorded in the minutes of said court, directing the sheriff to summon from the citizens of the county in which such land, real estate, premises or other property sought to be acquired or appropriated shall be situated, as many qualified persons as may be necessary in order to form a jury of twelve persons, unless the parties to the proceedings consent to a less number (such number to be not less than three), and such consent shall be entered by the clerk in the minutes of the trial. If necessary to complete the jury, the sheriff, under the direction of the court or judge thereof, shall summon as many qualified persons as may be



required to complete the jury from the bystanders, citizens of the county where the land, real estate, premises or other property is situated.

**§7665. Assessment of Damages—Conduct of Trial.** §5. A judge of the superior court shall preside at the trial which shall be held at such time as the court, or the judge thereof may direct, at the court house in the county where the land, real estate, premises or other property sought to be appropriated or acquired is situated, and the jurors at such trial shall make in each case a separate assessment of damages which shall result to any person, corporation or company, or to any county by reason of the appropriation and use of such land, real estate, premises or other property, and shall ascertain, determine and award the amount of damage to be paid said owner or owners respectively, and to all tenants, incumbrancers and others interested for taking such land, real estate, premises or other property so taken. Upon the trial, witnesses may be examined in behalf of either party to the proceedings as in civil actions; and a witness served with a subpoena in such proceedings shall be punished for failure to appear at such trial or for perjury as upon a trial of a civil action. Upon the verdict of the jury, judgment shall be entered for the amount of the damages awarded to such owner or owners, respectively, and to all tenants, incumbrancers and others interested for taking such land, real estate or premises. In case a jury is waived as in civil cases in courts of record in the manner prescribed by law, the compensation to be paid for the property sought to be appropriated shall be ascertained and determined by the court, or the judge thereof, and the proceedings shall be the same as in trials of an issue of fact by the court.

What United States paid for adjoining by engineer conducting them is harmless, tract several years prior to trial is inad- United States v. Freeman 113 Fed. Rep. missible—view by jury of other lands in 370.  
directing them when unintentionally done

**§7666. Judgment.** §6. At the time of rendering judgment for damages whether upon default or trial, the court, or judge thereof, shall also enter a judgment or decree of appropriation of the land, real estate or premises sought to be appropriated, thereby vesting the legal title to the same in the State of Washington. Whenever said judgment or decree of appropriation is made, a certified copy of such judgment or decree of appropriation may be filed for record in the office of the auditor of the county where the said land, real estate or other premises are situated, and shall be recorded by said auditor like a deed of real estate, and with like effect.

Award paid by warrants when no appropriation or fund exhausted, State ex rel Peel v. Clausen 94 W. 166.

**§7667. Damages; How Paid.** §7. Upon the entry of judgment upon the verdict of the jury or the decision of the court, or judge thereof, awarding damages as hereinbefore prescribed, the State of Washington may make payment of the damages assessed to the parties entitled to the same, and of the costs of the proceedings, by depositing the same with the clerk of said superior court, to be paid out under the direction of the court, or the judge thereof; and upon making such payment into the court of the damages assessed and allowed, and of the costs to any land, real estate, premises or other property mentioned in said petition, said State of Washington shall be released and discharged from any and all further liability therefor, unless upon appeal the owner or party interested shall recover a greater amount of damages: and in that case only for the amount in excess of the sum paid into said court, and the costs of appeal: Provided, That in case of an appeal to the supreme court of the state by any party to the proceedings, the money so paid into the superior court by the state as aforesaid, shall remain in the custody of said court until the final determination of the proceedings by the said supreme court.

**§7668. Payment of Damages Jointly.** §8. Any person, corporation or county, claiming to be entitled to any money paid into court, as provided in this act, may apply to the court therefor, and upon furnishing evidence satisfactory to the court that he or it is entitled to the same, the court shall make an order directing the payment to such claimant the portion of such money as he or it shall be found entitled to; but if, upon application, the

court or judge thereof should decide that the title to the land, real estate, or premises, specified in the application of such claimant was in such condition as to require that an action be commenced to determine the conflicting claims thereto, he shall refuse such order until such action is commenced and the conflicting claims to such land, real estate or premises be determined according to law.

Procedure not exclusive if fund has been paid into court, *State ex Smith v. Court*, 71 W. 354.

**§7669. Appeal. §9.** Either party may appeal from the judgment for damages entered in the superior court, to the supreme court of the state, within thirty days after the entry of judgment as aforesaid, and such appeal shall bring before the supreme court the propriety and justness of the amount of damages in respect to the parties to the appeal: Provided, however That upon such appeal no bond shall be required: And provided further, That if the owner of the land, the real estate, or premises, accepts the sum awarded by the jury, the court or the judge thereof, he shall be deemed thereby to have waived conclusively an appeal to the supreme court, and final judgment by default may be rendered in the superior court as in other cases: Provided further, That no appeal shall operate so as to prevent the said State of Washington from taking possession of such property pending such appeal after the amount of said award shall have been paid into court.

**§7670. State Auditor Shall Draw Warrant. §10.** Whenever the attorney general shall file with the auditor of this state a certificate setting forth the amount of any award found against the State of Washington under the provisions of this act, together with the costs of said proceeding, and a description of the lands and premises sought to be appropriated and acquired, and the title of the action or proceeding in which said award is rendered it shall be the duty of the state auditor to forthwith issue a warrant upon the state treasury to the order of the attorney general in a sum sufficient to make payment in money of said award, and the costs of said proceeding, and thereupon it shall be the duty of said attorney general to forthwith pay to the clerk of said court in money the amount of said award and costs.

Filing award with auditor is discretion—required to issue warrant, *State ex rel. ary—no execution against state—auditor Peel v. Clausen* 94 W. 166.

**AN ACT relating to the exercise of the power of eminent domain for military purposes, by the state, by counties and by cities.** Approved March 15, 1917. Laws '17 p 620.

**§7671. Military Purposes—Certificate of Necessity. §1.** Whenever the governor, as commander-in-chief of the military of this state, shall deem it necessary to acquire any lands, real estate, premises or other property for any military purpose or purposes of this state, either to add to, enlarge, increase or otherwise improve state military facilities now or hereafter existing or to establish new facilities, the acquisition of which shall have been provided for by the state, by a county or by a city, or by either, all or any thereof, upon certificate by the governor of such necessity, proceedings for the condemnation, appropriation and taking of the lands, real estate, premises or other property so certified to be necessary shall be taken as follows:

**Proceedings by State.** Where the state is to pay the purchase price it shall be the duty of the attorney general, upon receipt by him of said certificate of the governor, to file a petition in the superior court for the county in which such lands, real estate, premises or other property may be situate praying such condemnation, appropriating and taking, which petition shall be prosecuted to a final determination in the manner by law provided for other condemnation suits brought by or on behalf of the state;

**By County.** Where a county is to pay the purchase price it shall be the duty of the prosecuting attorney of said county, upon receipt by him of said certificate of the governor, to file a petition in the superior court for said county praying such condemnation, appropriation and taking, which petition shall be prosecuted to a final determination in the manner by law provided for other condemnation suits brought by or on behalf of a county;

**By City—Joinder of State, County and City.** Where a city is to pay the purchase price it shall be the duty of the corporation counsel, city attor-



ney or other head of the legal department of said city, upon receipt by him of said certificate of the governor, to file a petition in the superior court for the county in which said city is situate, praying such condemnation, appropriation and taking, which petition shall be prosecuted to a final determination in the manner by law provided for other condemnation suits brought by or on behalf of such city;

Where the purchase price is to be paid by the state, a county and a city or by the state and a county, or by the state and a city, or by a county and a city, the condemnation shall be prosecuted to a final determination in the manner by law provided for either or any thereof, as the governor may determine, which determination shall be final and conclusive.

**§7672. Condemnation for Federal Purposes.** §2. Nothing herein contained shall be construed as in any manner applying to condemnation by any county for the purpose of acquiring title to any site for a mobilization, training and supply station, to be donated by any county to the United States.

### **EMINENT DOMAIN—STATE LANDS, GRANTS.**

Actions, service of process — judgment	Logging, etc., companies §7681.
§7694.	Overflow, for impounding water various
Electric rights of way, municipal and private §7686.	purposes §7691.
Eminent domain by cities §7550.	Railroad rights of way §7673.

**Supplementary—AN ACT** granting rights-of-way to railroad companies over the lands of the State of Washington, and providing for the appraisal and disposition of the lands included within and used for such rights-of-way, and declaring an emergency. Approved March 18, 1901. Laws '01 p 353.

**§7673. Right-of-Way Over State Lands.** §1. That a right of way through, over and across the public lands of the State of Washington, except tide lands, harbor areas and shore lands, is hereby granted to any railroad company duly organized under the laws of any state or by the Congress of the United States to any extent not exceeding fifty feet on each side of the center line of said railroad now constructed or hereafter to be constructed unless a greater width is required for excavations, embankments, depot, station grounds, passing tracks or barrow pits, which extra width shall not in any case exceed two hundred feet on either side of said center way, **Provided:** That this act shall not apply to any lands acquired or used by any of the public institutions of this State. In order to obtain the benefits of this grant as to any railroad hereafter to be constructed, the company constructing or proposing to construct such road shall file with the Board of State Land Commissioners a copy of its articles of incorporation, due proofs of organization thereunder, a map or maps accompanied by the field notes of the survey and location of the line of said railroad, and shall pay to the State as hereinafter provided the amount of the appraised value of said lands affected by, used for or included within said right of way and extra widths if any are required. In order to obtain the benefits of this grant as to any railroad now constructed, the company owning such road shall file with the Board of State Land Commissioners a list of the lands affected by, used or included within such right of way, and shall pay to the State as hereinafter provided the amount of the appraised value of said lands affected by, used for or included within said right of way and extra widths. L. '07 201.

First to take possession first in right in R. Co. v. Portland etc. Co. 49 W. 88.  
case of error of description and there is Cited 75 W. 116.  
only one practicable route, Columbia Val.

**§7674. Classification and Appraisal.** §2. That all lands of this state over which a right-of-way of any railroad company may now or hereafter be located shall be classified and appraised as hereinafter provided, and the State Board of Land Commissioners shall constitute and serve as the board of appraisers mentioned in section 2 of article XVI of the constitution of this state.

**§7675. Price Per Acre. §3.** That upon the filing of said list or maps by said company as herein provided, said Board of State Land Commissioners are hereby authorized and directed to ascertain and classify the lands affected by, to be used for and included within the aforesaid right-of-way, and shall thereupon fix the price per acre for each lot or block, quarter section and subdivision thereof, less the improvements, if any, so affected by, used for and included within said right-of-way, which price shall be the full market value thereof but not to be less than ten dollars per acre.

**§7676. Separate Appraisal of Improvements on Rights of Way—Deposit with Land Commissioner—Award to Claimant—Settlement for Damages to Other Parties. §4.** Should any improvements made as of right and with license from the State of Washington be upon any of such lands at the time of said appraisalment, the board of state land commissioners shall separately appraise the same together with the damage and waste done to said lands by the use and occupancy of the same or to adjacent lands and after deducting from the amount of appraisalment for improvements the amount of such damage and waste the balance shall be determined and regarded as the value of said improvements, and the railroad company if not the owner of such improvements shall deposit with the commissioner of public lands the value of the same as shown by said appraisalment within thirty days next following the date thereof. The commissioner of public lands shall hold such moneys for the period of three months, and unless a demand and proof of the ownership of such improvements shall be made to the commissioner of public lands within said period of three months the same shall be deemed forfeited to the state and deposited with the state treasurer and paid into the general fund of the state. If two or more persons shall, within said period of three months, file claims of the ownership of the said improvements with the commissioner of public lands, the commissioner shall hold such moneys until a certified copy of a judgment decreeing the ownership of said improvements shall be filed with him. When a certified copy of a judgment has been so filed with the commissioner of public lands, he shall pay to the owner thereof, as decreed by said judgment, the appraised value of said improvements. Where said right of way affects the improvements of any person other than the person owning improvements on said right of way or entitled thereto under existing law the applicant for said right of way shall file with the commissioner of public lands a valid release of damages duly executed by such owner or owners, or a certified copy of a judgment of a court of competent jurisdiction showing that the damages resulting to such owner or owners, ascertained in accordance with existing law, has been made or paid into the registry of such court. L. '15 405, R.&B. §6836.

**§7677. Record of Appraisalment—Notice to County Commissioners. §5.** When said appraisalment is made it shall be recorded in the proceedings of said Board of State Land Commissioners and the evidence or report upon which the same is based shall be preserved of record in the office of the Board of State Land Commissioners and the Commissioner of Public Lands shall prepare a certificate of said appraisalment in duplicate, one of which he shall file in his office and the other transmit to the auditor of the county in which the lands affected by said rights-of-way are located; and shall send a notice to the railroad company availing itself of the provisions of this act that such appraisalment has been made. The board of county commissioners of any county where the said right-of-way is situate shall be forthwith served with notice of appraisalment. A copy of said appraisalment shall be forthwith filed with the board of county commissioners of any county in which the land is situated.

**§7678. Appeal. §6.** Within thirty days after the appraisalment of said lands, as aforesaid, the board of county commissioners of any county in which the right-of-way is situate, or any person, company or corporation may appeal from the same to the Superior Court of the county in which the right-of-way affected by the appeal is situate; but if the applicant is the party appealing, he or it must deposit the amount of the appraisalment in the registry of the court to which the appeal is taken. All apocals shall be heard



and determined by the court de novo. The taking of an appeal shall not prevent the use of the land affected thereby for right-of-way purposes during the prosecution of the appeal. All costs on appeal shall be paid by the applicant.

Appeals from state land commissioners generally, 477 §159.

**§7679. Future Grants Subject to Easement—Right of Way Certificate. §7.** Upon full payment of the value of such easement ascertained as aforesaid, any future grant or lease by the state of the lands affected by said right of way shall be subject to the easements obtained under the provisions of this act: Provided, however, That before any such easement shall become effective a right of way certificate shall be issued to said railway company by the commissioner of public lands, in which the terms and conditions of such easement shall be set forth and the lands covered thereby described. Such certificate shall be in such form as the commissioner of public lands may prescribe. L. 15 405, R.&B. §6839.

**§7680. Other Laws Saved. §8.** Nothing contained in this act shall be deemed to in any way conflict with any existing law of this state relating to the method by which railroad companies may acquire rights-of-way. No pending condemnation proceeding nor right claimed therein shall be affected in any way by the provisions of this act.

**AN ACT relating to rights-of-way and easements over state lands of private logging companies, reserving rights for rights-of-way over state lands hereafter granted, providing for the moving of timber, stone, mineral and other products over state lands hereafter granted, providing penalties for the violation of the act and providing for certain rights-of-way and easements reverting to the state. Approved March 17, 1911. Laws '11 p 506.**

**§7681. Logging Etc. Companies. §1.** That all state lands hereafter granted, sold or leased containing timber, stone, mineral or other products or when other state lands contiguous or in proximity thereto contain valuable timber, stone, mineral or other products, shall be subject to the right of the state, or any grantee or lessee thereof hereafter acquiring such other lands, or acquiring the timber, stone, mineral or other products thereon, to acquire the right of way over such lands so granted, for private railroads, skid roads, flumes, canals, watercourses or other easements for the purpose of and to be used in the transporting and moving of such timber, stone, mineral or other product from such other lands, over and across the lands so granted or leased, upon the state or its grantee paying to the owner of the lands so granted, sold or leased reasonable compensation therefor. In case the parties interested cannot agree upon the damages incurred, the same shall be ascertained and assessed in the same manner as damages are ascertained and assessed against a railroad seeking to condemn private property.

**§7682. All Rights-of-Way Servient—Rates. §2.** Every grant, deed, conveyance, lease or contract hereafter made to any person, firm or corporation over and across any state lands for the purpose of right of way for any private railroad, skid road, flume, canal, water-course or other easement to be used in the hauling of timber, stone, mineral or other products of the land, shall be subject to the right of the state or any grantee thereof or other person owning or hereafter acquiring any lands containing valuable timber, stone, mineral or other products contiguous to or in proximity thereto, or hereafter acquiring the timber, stone, mineral or other product situate upon state lands so contiguous or in close proximity to the said lands, over which said right of way or easement is acquired having such timber, stone, mineral or other product transported or moved over such railroad, skid road, flume, canal, watercourse or other easement after the same is or has been put in operation upon paying therefor just and reasonable rates for transportation or for the use of such railroad, skid road, flume, canal, watercourse or other easement and upon complying with just, reasonable and proper rules affecting such transportation, which rates, rules and regulations shall be under the supervision and control of the railroad commission of Washington.

**§7683. Common Carrier.** §3. Any person, firm or corporation hereafter acquiring the right of way or other easement over state lands or over any tide or shore land belonging to the state or over or across any navigable water or stream for the purpose of transporting or moving timber, stone, mineral or other products, and engaged in such business thereon, shall accord to the state or any grantee thereof hereafter acquiring lands containing valuable timber, stone, mineral or other products contiguous and in proximity thereto, or any person, firm or corporation hereafter acquiring the timber, stone, mineral or other products situate upon state lands so contiguous and in proximity to the lands over which said right of way or easement is operated, proper and reasonable facilities and service for the transportation and moving of such timber, stone, mineral and other products under reasonable rules and regulations and upon payment of just and reasonable charges therefor, or, if such right of way or other easement is not then in use to have the right to use such right of way or easement for transporting and moving such products under such reasonable rules and regulations and upon payment of just and reasonable charges therefor

**§7684. Appeal on Rates.** §4. Should the owner or operator of any private line of railroad, skid road, flume, canal, watercourse or other easement operating over lands hereafter acquired from the state, as in this act set out, fail to agree with the state or with any subsequent grantee thereof as to the reasonable and proper rules regulations and charges concerning the transportation of timber, stone, mineral or other products, from lands contiguous or in proximity of the lands over which the right of way or easement is granted, for carrying and transporting such products or for the use of the railroad, skid road, flume, canal, watercourse or other easement in transporting such product, the state or such person, firm or corporation owning and desiring to ship such products may apply to the railroad commission and have the reasonableness of the rules, regulations and charges inquired into and it shall be the duty of the railroad commission to inquire into the same in the same manner and it is hereby given the same power and authority to investigate the same as it is now authorized to investigate and inquire into the rules and regulations and charges made by railroads and is authorized and empowered to make such order as it would make in an inquiry against a railroad, and in case such railroad, skid road, flume, canal, watercourse or other easement is not then in use, may make such reasonable, proper and just rules and regulations concerning the use thereof for the purposes aforesaid as may be just and proper and such order shall have the same force and effect and be binding upon the parties to such hearing as though such hearing and order was made affecting a railroad.

**§7685. Failure to Comply—Penalty.** §5. In case any person, firm or corporation owning and operating any private railroad, skid road, flume, canal, watercourse or other easement over and across lands hereafter acquired from the state obtained subject to the provisions of this act shall fail to comply with any rule, regulation or order made by the railroad commission after an inquiry as provided for in the preceding section, such person, firm or corporation shall be subject to a penalty not exceeding one thousand dollars for each and every violation thereof, and in addition thereto such right of way, railroad, skid road, flume, canal, watercourse or other easement and all improvements and structures on such right of way and connected therewith, shall revert to the State of Washington and may be recovered by it in an action instituted in any court of competent jurisdiction.

**AN ACT** granting rights-of-way to municipal corporations, electric light, power and street railway companies, associations and individuals over ~~the lands of the State of Washington~~ and providing for the appraisement

**§7686. Electrics, Public and Private.** §1. A right of way through, over and across public lands of the State of Washington is hereby granted to any municipal or private corporation, company, association or individual, consing or proposing to construct, or which has heretofore or street railway company, telephone company, association, or individual,



and determined by the court de novo. The taking of an appeal shall not prevent the use of the land affected thereby for right-of-way purposes during the prosecution of the appeal. All costs on appeal shall be paid by the applicant.

Appeals from state land commissioners generally, 477 §159.

**§7679. Future Grants Subject to Easement—Right of Way Certificate.** §7. Upon full payment of the value of such easement ascertained as aforesaid, any future grant or lease by the state of the lands affected by said right of way shall be subject to the easements obtained under the provisions of this act: Provided, however, That before any such easement shall become effective a right of way certificate shall be issued to said railway company by the commissioner of public lands, in which the terms and conditions of such easement shall be set forth and the lands covered thereby described. Such certificate shall be in such form as the commissioner of public lands may prescribe. L. 15 405, R.&B. §6839.

**§7680. Other Laws Saved.** §8. Nothing contained in this act shall be deemed to in any way conflict with any existing law of this state relating to the method by which railroad companies may acquire rights-of-way. No pending condemnation proceeding nor right claimed therein shall be affected in any way by the provisions of this act.

**AN ACT relating to rights-of-way and easements over state lands of private logging companies, reserving rights for rights-of-way over state lands hereafter granted, providing for the moving of timber, stone, mineral and other products over state lands hereafter granted, providing penalties for the violation of the act and providing for certain rights-of-way and easements reverting to the state.** Approved March 17, 1911. Laws '11 p 506.

**§7681. Logging Etc. Companies.** §1. That all state lands hereafter granted, sold or leased containing timber, stone, mineral or other products or when other state lands contiguous or in proximity thereto contain valuable timber, stone, mineral or other products, shall be subject to the right of the state, or any grantee or lessee thereof hereafter acquiring such other lands, or acquiring the timber, stone, mineral or other products thereon, to acquire the right of way over such lands so granted, for private railroads, skid roads, flumes, canals, watercourses or other easements for the purpose of and to be used in the transporting and moving of such timber, stone, mineral or other product from such other lands, over and across the lands so granted or leased, upon the state or its grantee paying to the owner of the lands so granted, sold or leased reasonable compensation therefor. In case the parties interested cannot agree upon the damages incurred, the same shall be ascertained and assessed in the same manner as damages are ascertained and assessed against a railroad seeking to condemn private property.

**§7682. All Rights-of-Way Servient—Rates.** §2. Every grant, deed, conveyance, lease or contract hereafter made to any person, firm or corporation over and across any state lands for the purpose of right of way for any private railroad, skid road, flume, canal, water-course or other easement to be used in the hauling of timber, stone, mineral or other products of the land, shall be subject to the right of the state or any grantee thereof or other person owning or hereafter acquiring any lands containing valuable timber, stone, mineral or other products contiguous to or in proximity thereto, or hereafter acquiring the timber, stone, mineral or other product situate upon state lands so contiguous or in close proximity to the said lands, over which said right of way or easement is acquired having such timber, stone, mineral or other product transported or moved over such railroad skid road flume

fore constructed, any telephone line, ditch, flume or pipe line for the domestic water supply of any municipality, or transmission line for the purpose of generating or transmitting electricity for light, heat or power.

'21 ch. 148.

**§7683. Common Carrier.** §3. Any person, firm or corporation hereafter acquiring the right of way or other easement over state lands or over any tide or shore land belonging to the state or over or across any navigable water or stream for the purpose of transporting or moving timber, stone, mineral or other products, and engaged in such business thereon, shall accord to the state or any grantee thereof hereafter acquiring lands containing valuable timber, stone, mineral or other products contiguous and in proximity thereto, or any person, firm or corporation hereafter acquiring the timber, stone, mineral or other products situate upon state lands so contiguous and in proximity to the lands over which said right of way or easement is operated, proper and reasonable facilities and service for the transportation and moving of such timber, stone, mineral and other products under reasonable rules and regulations and upon payment of just and reasonable charges therefor, or, if such right of way or other easement is not then in use to have the right to use such right of way or easement for transporting and moving such products under such reasonable rules and regulations and upon payment of just and reasonable charges therefor

**§7684. Appeal on Rates.** §4. Should the owner or operator of any private line of railroad, skid road, flume, canal, watercourse or other easement operating over lands hereafter acquired from the state, as in this act set out, fail to agree with the state or with any subsequent grantee thereof as to the reasonable and proper rules regulations and charges concerning the transportation of timber, stone, mineral or other products, from lands contiguous or in proximity of the lands over which the right of way or easement is granted, for carrying and transporting such products or for the use of the railroad, skid road, flume, canal, watercourse or other easement in transporting such product, the state or such person, firm or corporation owning and desiring to ship such products may apply to the railroad commission and have the reasonableness of the rules, regulations and charges inquired into and it shall be the duty of the railroad commission to inquire into the same in the same manner and it is hereby given the same power and authority to investigate the same as it is now authorized to investigate and inquire into the rules and regulations and charges made by railroads and is authorized and empowered to make such order as it would make in an inquiry against a railroad, and in case such railroad, skid road, flume, canal, watercourse or other easement is not then in use, may make such reasonable, proper and just rules and regulations concerning the use thereof for the purposes aforesaid as may be just and proper and such order shall have the same force and effect and be binding upon the parties to such hearing as though such hearing and order was made affecting a railroad.

**§7685. Failure to Comply—Penalty.** §5. In case any person, firm or corporation owning and operating any private railroad, skid road, flume, canal, watercourse or other easement over and across lands hereafter acquired from the state obtained subject to the provisions of this act shall fail to comply with any rule, regulation or order made by the railroad commission after an inquiry as provided for in the preceding section, such person, firm or corporation shall be subject to a penalty not exceeding one thousand dollars for each and every violation thereof, and in addition thereto such right of way, railroad, skid road, flume, canal, watercourse or other easement and all improvements and structures on such right of way and connected therewith, shall revert to the State of Washington and may be recovered by it in an action instituted in any court of competent jurisdiction.

**AN ACT** granting rights-of-way to municipal corporations, electric light, power and street railway companies, associations and individuals over the lands of the State of Washington and providing for the appraisement and disposition of the lands included within and used for such rights-of-way. Approved March 17, 1909. Laws '09 p 654.

**§7686. Electric Lines, Municipal and Private.** §1. A right of way through, over and across the public lands of the State of Washington is hereby granted to any municipal corporation, or to any electric light, power or street railway company, telephone company, association, or individual,



constructing or proposing to construct any ditch, flume or pipe line or transmission line for the purpose of generating or transmitting electricity for light, heat or power, or telephone line. L '19 ch 97; R&B, §6848.

Cited 75 W. 116.

**§7687. Land Commissioner Notified—Width.** §2. In order to obtain the benefits of this grant the municipal corporation, company, association or individuals constructing or proposing to construct such ditch, flume, pipe line, telephone line or transmission line, for the purpose of generating or transmitting electricity, shall file with the board of state land commissioners a map, accompanied by the field notes of the survey and location of the proposed ditch, flume, pipe line, transmission line, or telephone line, and shall pay to the state as hereinafter provided the amount of the appraised value of said lands and improvements, if any, used for or included within said right of way. The land within said right of way shall be limited to an amount necessary for the construction of said ditch, flume, pipe line, transmission line or telephone line sufficient for the purpose required, together with sufficient land on either side thereof for ingress and egress to maintain and repair the same, and shall include the right to cut all standing timber within a radius of 200 feet on either side of said ditch, flume, pipe line, transmission line, or telephone line, which shall be dangerous to the operation and maintenance of the same. L '19 ch 97; R&B, §6849.

**§7688. Valuation.** §3. Upon the filing of the plat and field notes as herein provided, said Board of State Land Commissioners are hereby authorized and directed to ascertain the value of the land and improvements, if any to be used for or included in said right-of-way and the value of all merchantable timber so cut, or to be cut all of which shall be the full value thereof.

**§7689. Reversion.** §4. Upon full payment of the value of such easement ascertained as aforesaid, any future grant or lease by the state of the lands affected by such right-of-way shall be subject to the easement obtained under the provisions of this act: Provided, however, That should the company, association or individual securing said easement ever abandon same for the purposes contemplated in this act the said right-of-way shall revert to the state.

**§7690. Act Concurrent.** §5. Nothing contained in the four preceding sections shall be deemed to in any way conflict with any existing laws of this state relating to the methods of acquiring rights of way for ditches, flumes, pipe lines, transmission lines or telephone lines for the purposes therein specified. L '19 ch 97; R&B, §6852.

**AN ACT** providing for and giving and granting the right, privilege and authority to perpetually back water upon, overflow and inundate with water, lands belonging to the State of Washington, in the erection, construction, maintenance or operation of water power plants, reservoirs, or works for impounding water, for power purposes, irrigation, mining, or other public use. Approved March 11 1907. Laws '07 p 233.

**§7691. Right to Overflow State Lands.** §1. The board of state land commissioners is authorized to grant any person or corporation the right, privilege, power and authority to perpetually back and hold water upon and over any land belonging to the State of Washington, and to overflow any such land and inundate the same, if said board deems it necessary for the purpose of erecting, constructing, maintaining or operating any water power plant, reservoir or works for impounding water for power purposes, irrigation, mining or other public use. L. 15 405, R.&B. §6828.

Grant not subject to condemnation for same purpose—failure to use, State ex Mason County P Co. v. Court 102 W. 496. Was not repealed by water code, State ex Mason County P. Co. v. Court 102 W. 291.

Cited 75 W. 116.

**§7692. Payment of Damages—Forfeiture of Grant.** §2. The right, privilege, power and authority herein given and granted by said board of state land commissioners shall not be exercised or enjoyed until the amount of damages appraised and fixed by said board shall have been paid by the person or corporation to whom such right is granted: Provided, That if the

construction or erection of any such water power plant, reservoir or works for impounding water for the purposes as heretofore specified shall not be commenced and be diligently prosecuted and completed within such time as the board may prescribe at the time such right, privilege, power and

**§7587. Notice to Land Commissioner—Width.** §2. In order to obtain the benefits of this grant, such municipal or private corporation, company, association or individuals constructing or proposing to construct or which has heretofore constructed, such telephone line, ditch, flume, pipe line or transmission line, shall file with the the Board of State Land Commissioners a map, accompanied by the field notes of the survey and location of such telephone line, ditch, flume, pipe line, or transmission line, and shall pay to the state as hereinafter provided the amount of the appraised value of said lands and improvements, if any, used for or included within

**AN ACT relating to procedure in condemnation proceedings to appropriate lands owned by the state, or in which it has an interest.** Approved March 16 1907. L. '07 p 507.

**§7694. Process Served on Commissioner of Public Lands.** §1. That in all condemnation proceedings brought for the purpose of appropriating any land owned by the State or in which it has an interest, service of process shall be made upon the Commissioner of Public Lands.

**§7695. Decree Filed With Commissioner—Record.** §2. When a decree is entered appropriating lands owned by the State, or in which the State has an interest, before any such decree shall be effective, the plaintiff shall cause to be filed in the office of the Commissioner of Public Lands a certified copy of such decree, together with a plat of the lands appropriated and contiguous thereto, in form and substance as prescribed and required by the Board of State Land Commissioners, showing in detail the lands appropriated, together with the amount of damages fixed and awarded in the decree. Upon receipt of such decree, plat and damages, the Commissioner or [of] Public Lands shall examine the same, and if he shall find that the final decree and proceedings comply with the original petition and notice and any amendment duly authorized, and that no additional interest of the state has been taken or appropriated through error or mistake, he shall cause notations thereof to be made upon the abstracts, records and tract books of his office, and shall issue to the plaintiff his certificate, reciting compliance, in substance, with the requirements of this act, particularly describing the lands appropriated, and thereupon the appropriation shall become effective and the Commissioner of Public Lands shall forthwith transmit the amount received as damages to the State Treasurer, as in case of the sale of land, and the sub-division of land through which such right-of-way is appropriated shall thereafter be sold or leased subject to the right-of-way. L. '09 625.

## **EMINENT DOMAIN—BY TELEGRAPH, ETC., COMPANIES.**

Telegraph, etc., companies as private corporations §4711.

**AN ACT to authorize telegraph and telephone companies to exercise the right of eminent domain and to prescribe the mode of appropriation.** Approved February 1, 1888. Laws '88 p 65.

**§7696. Telegraph and Telephone Companies May Condemn.** §1. That every corporation incorporated under the laws of this state or any state or territory of the United States for the purpose of constructing, operating, or maintaining any telegraph or telephone in this state shall have the right to enter upon any land between the termini of its proposed lines of telegraph or telephone for the purpose of examining, locating, and surveying the line of such telegraph or telephone. doing no unnecessary damage thereby.

Eminent domain, etc., later act §4711.



§7697. — **Extent, Right to Railway Line.** §2. Such telegraph or telephone company may appropriate so much land as may be actually necessary for its line of telegraph or telephone with the right to enter upon lands immediately adjacent thereto, for the purpose of constructing, maintaining, and operating its line and making all necessary repair. Such telegraph or, telephone company may also, for the purpose aforesaid, enter upon and appropriate such portion of the right-of-way of any railroad company as may be necessary for the construction, maintenance, and operation of its telegraph or telephone line: Provided, however, That such appropriation shall not obstruct such railroad of the travel thereupon, nor interfere with the operation of such railroad.

Telegraph company may condemn adjacent to railroad, *State ex rel De Soucy v. Superior Court* 77 W. 31.

## EMINENT DOMAIN—WAREHOUSES, ETC.

**AN ACT** to extend the right of eminent domain to warehouse and elevator companies. Approved March 12, 1919. L '19 ch 98.

§7697-1. **Warehouse and Elevator Companies Authorized.** §1. The right of eminent domain is hereby extended to corporations incorporated or that may hereafter be incorporated under the laws of this state, or of any other state or territory and qualified to transact business in this state for the purpose of acquiring, owning or operating public warehouses or elevators for storing and handling grain, produce and other agricultural commodities which may desire to secure warehouse or elevator sites or rights of way for roadways leading to and from the same or for wharves or boat landings on navigable waters and all other purposes incident to and connected with the business conducted by such warehouse or elevator.

§7697-2. **Entry for Location.** §2. Every corporation incorporated or that may hereafter be incorporated under the laws of this state or of any other state or territory, and qualified to transact business in this state for the purpose of acquiring, owning or operating public warehouses or elevators for storing and handling grain, produce and other agricultural commodities, which may desire to erect and operate any such public warehouse or elevator, or to erect and operate tramways or cable tramways for the purpose of carrying, conveying or transporting such grain, produce or commodities to or from such warehouse or elevator or to acquire rights of way for roadways to and from such warehouse or elevator or to acquire boat landing or wharving facilities in connection with such warehouse or elevator shall have the right to enter upon any lands proposed to be used for any such purpose for the purpose of examining, locating and surveying the lines and boundaries thereof, doing no unnecessary damage thereby.

§7697-3. **Procedure.** §3. Every such corporation shall have the right to appropriate real estate and other property for any or all of the said purposes and under the same procedure as now is or may be hereafter provided by [§7646] law, in the case of other corporations authorized by the laws of this state to exercise the right of eminent domain.

§7697-4. **Port Districts and Railroads Saved.** §4. The right hereby granted shall not be exercised within the limits of any regularly organized port district, nor against the right of way of any railroad company within the yard limits thereof, nor unless and until the public service commission after a full hearing shall have determined that existing facilities are inadequate and that a public necessity exists for the construction of additional facilities and shall specify what additional facilities are necessary and shall have further determined that the facilities contemplated to be established will be a public benefit. Such hearing shall be initiated and conducted in accordance with the statutes, rules and regulations relating to public hearings before the public service commission.

**EMINENT DOMAIN—WATER PURPOSES.**

Appropriation by notice and use §7710.

Water companies may condemn — consent of town §4538.

Canal companies may condemn §7645.

Canal, etc., purposes §7701.

Water power companies §7698.

Mining and manufacturing purposes §7719.

**Supplementary—AN ACT extending the right of eminent domain to water power companies.** Approved March 18, 1901. Laws '01 p 290.

**§7698. Water Power Companies May Condemn.** §1. The right of eminent domain for the purpose of appropriating real estate is hereby extended to all corporations that are now or that may hereafter be incorporated under the laws of this state, or of any state or territory of the United States and doing business in this state, for the purpose of conveying water by ditches, flumes, pipe lines, tunnels or any other means for the utilization of water power: Provided, however, That said right of eminent domain shall not be exercised in respect to any residence or business structure or structures.

**§7699. Preliminary Survey.** §2. Every corporation that is now or that may hereafter be incorporated under the laws of this state, or of any other state or territory of the United States and doing business in this state, for the purpose of conveying water by ditches, flumes, pipe lines, tunnels or any other means for the utilization of water power, shall have the right to enter upon any land between the termini of the proposed ditches, flumes, pipe lines, tunnels or any other means for the utilization of water power, for the purpose of examining, locating and surveying such ditches, flumes, pipe lines, tunnels or any other means for the utilization of water power, doing no unnecessary damage thereby.

**§7700. The Usual Procedure.** §3. Every such corporation shall have the right, subject to the proviso contained in section 1 hereof to appropriate real estate or other property for a right-of-way for such ditches, flumes, pipe lines, tunnels or other means of conveying water, and for any other corporate purposes, in the same manner and under the same procedure as now is or may be hereafter provided by law in the case of other corporations authorized by the laws of this state to exercise the right of eminent domain.

**AN ACT providing for condemnation proceedings for right-of-way for irrigating ditches, canals, and flumes for agricultural and mining purposes and relating to right of appropriation of water.** Approved March 14, 1899. Laws '99 p 261.

**§7701. Condemnation for Canals and Flumes.** §1. That any person, corporation or association of persons is entitled to take from the natural streams, or lakes in this state water for the purposes of irrigation and mining, not theretofore appropriated or subject to rights existing at the time of the adoption of the constitution of this state, subject to the conditions and regulations imposed by law: Provided, That the use of water at all times shall be deemed a public use, and subject to condemnation as may from time to time be provided for by the legislature of this state.

Appropriation of lands, §7719.

General act regulating irrigation and ditches, §3275.



Riparian rights superior to nonriparian v. Court, 70 W. 442.  
appropriation, Bernot v. Morrison 81 W. Title and act embraces but one subject—  
538. procedure provided sufficient—provides for  
damages, Weed v. Goodwin 36 W. 31.

Riparian owner on navigable stream has  
no rights as such owner, State ex Ham

§7702. Rights of Riparian Proprietors. §2. All persons who claim,  
own or hold possessory right or title to any land, or parcel of land or mining  
claim within the boundaries of the State of Washington, when such lands,  
mining claims or any part of the same are on the banks of any natural stream  
of water, shall be entitled to the use of any water of said stream not other-  
wise appropriated for the purposes of mining and irrigation to the full ex-  
tent of the soil for agricultural purposes.

Act valid—semi-arid lands—gravity and pumping—speculative purposes, State ex  
rel. Galbraith v. Superior Court 59 W. 621.

§7703. Rights of Non-Riparian Proprietors. §3. When any person  
owning claims, lands or mining claims as specified in the foregoing section,  
is not a riparian proprietor or being such has not sufficient frontage on said  
stream, lake, artificial stream, ditch or reservoir, to obtain a sufficient flow  
of water to irrigate his land or use on his mining claim, he shall be entitled  
to the right of way through the farms or tracts of lands or other mining  
claims which lie between him and said stream, lake, artificial stream, ditch  
or reservoir, or the farms tracts of lands or mining claims which lie above  
and below him on said stream, lake, artificial stream, ditch or reservoir.

Lower riparian owner may not divert water appropriated by upper riparian  
owner, Miller v. Baker, 68 W. 19.

§7704. Extent of Right-of-Way. §4. Such right-of-way shall extend  
only to a ditch sufficient for the purpose required, together with the right of  
ingress and egress to construct, maintain and repair the same; and whenever  
any person or persons find it necessary to convey water for the purposes of  
irrigation or mining through the improved or occupied lands of another,  
he or they shall select for the line of such ditch through such property the  
shortest and most direct route practicable upon which can be constructed  
with uniform or nearly uniform grade, and discharging the water at a point  
where it can be conveyed to and used upon the land or lands or mining  
claim of the person or persons constructing such ditch canal or works.

§7705. Condemnation on Refusal of Owner. §5. Upon the refusal of  
the owner of the lands, lessees or those in possession, through which it is  
proposed to run said canal ditch or works to permit the passage of the same  
through their property, the person or persons desiring the right-of-way for  
such ditch canal or works may proceed to condemn and take the right-of-  
way therefor, as hereinafter provided.

§7706. Complaint—Summons—Trial—Judgment. §6. In case of the  
refusal of the owners or claimants of any lands or mining claims through  
which such ditch, canal or other works are proposed to be made or con-  
structed, to allow the right-of-way or the passage thereof, the persons, com-  
pany or corporation desiring the right-of-way shall file in the superior court  
of the county, a complaint describing the land or mining claim to be crossed,  
the size of the ditch, canal or works, the quantity of land required to be taken  
and the value of the land and damages to the property, setting forth the  
names of the owners or reputed owners or parties interested in the lands to  
be crossed, and praying that the right-of-way be granted. A summons shall  
issue and be served on all parties interested, as in all other cases of civil  
nature. In case the defendant fails to appear the court shall when the cause  
shall come on to be heard impanel a jury in the cause, and they shall de-  
termine the value of the land occupied by said ditch, canal or works and the  
damages, and, upon the return of the verdict, the court shall enter a decree,  
directing that the right-of-way for the ditch, canal or works be established  
according to the description in the complaint, and that the plaintiff shall pay  
to the clerk of the court the full amount of the value of the land and dam-  
ages found by the jury, before the plaintiff shall begin work on said ditch,  
canal or works.

Description of quantity of land—parties award, Fulton v. Methow Trading Co. 45 W.  
affected by appeal—extension of time for 136.  
statement of facts—time of payment of

§7707. **What Issue to Be Tried.** §7. That whenever the defendant shall appear in the cause, he shall allege in his answer the value of the land proposed to be used by said ditch, canal or works and the jury shall determine the value and the proceedings shall be had as in the preceding section: Provided, That plaintiff shall not be required to reply to the answer of the defendant, but the sole issue to be determined by the jury shall be the value of the land to be occupied by said ditch, canal or works, and the damages thereto.

§7708. **"Person" Defined.** §8. The word person, whenever used in this act, shall be construed to mean either a natural person, an association, or corporation, and the word he shall be construed to mean she, it, or they, and the word ditch shall be construed to include and mean dike, flumeway and irrigating canal.

§7709. **Act to Be Liberally Construed.** §9. The provisions of this act shall be liberally construed so that the ultimate object and the intent of this act shall be fully carried out.

**AN ACT concerning appropriation of water for irrigation, mining and manufacturing purposes for supplying cities, towns and villages with water, and for the use of water works and declaring an emergency. Approved March 9, 1891. General Repeal. Laws '91 p 327.**

§7710. **Appropriation of Water.** §1. The right to the use of water in any lake, pond, or flowing spring in this state, or the right to the use of water flowing in any river, stream or ravine of this state, for irrigation, mining, or manufacturing purposes or for supplying cities, towns, or villages with water, or for water works may be acquired by appropriation, and as between appropriations the first in time is the first in right.

Notice insufficient title acquired by adverse user, *Donatello v. Gust* 86 W. 268. grantee's first act in acquiring title, *Benton v. Johncox* 17 W. 277.

Water cannot be appropriated before Indian reservation opened up—squatters—first appropriator, *Avery v. Johnson* 59 W. 332. Riparian claimant to hold water must make use of it, *Northport Brg. Co. v. Perrot* 22 W. 243.

Law must be complied with to establish prescriptive rights, *Dickey v. Maddux* 48 W. 411. Water on public lands may be appropriated and patent does not defeat it, *Ellis v. Pomeroy Improvement Co.* 1 W. 572; *Geddis v. Parish* 1 W. 587.

Act applies only to public lands and riparian rights protected as at common law—title of public grantee dates from appropriation of water on public domain as recognized by congress—flouring mill as a purpose, *Isaacs v. Barber* 10 W. 124.

§7711. — **Notice.** §2. Any person, persons, corporation or association desiring to appropriate water must post a notice in writing in a conspicuous place at the point of intended storage or diversion, stating therein;—

First: That such appropriator claims the water there lying, being or flowing to the extent of one cubic foot of water per second of time or some multiple, or some fractional portion thereof.

Second: The purpose for which said water is appropriated and the place, or places, as near as may be of intended use.

Third: The means by which it is intended to store or divert the same.

Fourth: A copy of the notice must within ten (10) days after it is posted, be filed for record in the office of the county auditor of the county in which it is posted.

Diligence in work—extent of appropriation—abandonment, *Pleasant Val. Irr. & P. Co. v. Okanogan P. & Irr. Co.* 98 W. 401. prior right as against one who has posted notice and proceeded with diligence, *State ex rel. Ham v. Court*, 70 W. 442.

Acts looking to an appropriation of water will not make a belated posting of the required notice relate back so as to give a back—rights under, *Kendall v. Joyce* 48 W. 489.

§7712. — **Improvements Must Be Commenced.** §3. If said use is by storage, the appropriator must within three months after the notice is posted, commence the construction of the works by which it is intended to store the same. If said use is by diversion, the appropriator must within six months after the notice is posted, commence the excavation or construction of the works by which it is intended to divert the same; it being herein expressly provided, that such works must be diligently and continuously prosecuted to completion, unless temporarily interrupted by the elements.



Time necessary for condemnations ac- Locator failed to do necessary work, counted diligence, Grant Realty Co. v. Spokane Portland Cement Co. v. Larson Hamm, Yeardsley & Ryrle 96 W. 616. 71 W. 301.

**§7713. When Right Commences With Notice.** §4. By a strict compliance with the above rules the appropriator's rights to the use of the water actually stored or diverted, relates back to the time the notice was posted; but a failure to comply therewith deprives the appropriator of the right to the use of the water as against a subsequent appropriator who faithfully complies with the same.

**§7714. Present Claimants Must Proceed With Work.** §5. Persons who have heretofore appropriated water and have not constructed works or have not diverted the water and applied it to some purpose as herein stated, must within thirty days after this act takes effect, proceed as in this act provided, or their right ceases.

**§7715. Assignment of Right.** §6. The right to the use of water acquired by appropriation may be transferred like other property by deed. The county auditor of each county in this state, must keep a book in which he must record the notices provided for in this act.

**§7716. Vested Rights Saved.** §7. Appropriations of water heretofore made for any of the purposes in this act provided are hereby recognized, but this act shall not be construed to interfere with vested rights.

**§7717. How Act Shall Apply.** §8. The provisions of sections 2, 3, 4, and 5 shall only apply to appropriations of water made for irrigation, and shall not apply to appropriations for irrigation made prior to the passage of this act, nor to water rights existing at the date of the passage of this act: Provided That in appropriations for irrigation begun but not completed prior to the passage of this act, the appropriator shall comply with the provisions of said sections 2, 3, 4 and 5: And further provided That said sections shall not interfere with the vested rights of any irrigation district now organized.

**§7718. Use of Water May Be Changed.** §9. Water appropriated for any of the purposes in this act mentioned may be changed to any other purpose herein specified or to any other beneficial use, and the right to such use shall relate back to the original appropriation.

Electric power plant is beneficial use, Thompson v. Pennebaker 173 Fed. 848.

**Supplementary—AN ACT for the encouragement and support of mining and manufacturing.** Approved November 14, 1879. General Repeal. Laws '79 p 124.

**§7719. Certain Companies May appropriate Water.** §1. That any person or persons, or any company now incorporated, or that may hereafter become incorporated under the laws of this state for the purpose of mining or manufacturing, shall have the right to purchase, or appropriate and take possession of, and divert from its natural channel and use, and hold the waters of any river, creek or stream in this state that may be required for the mining and manufacturing purposes of any such person or persons, corporation or corporations, and to construct all dams canals, reservoirs, ditches, pipes, flumes and aqueducts, suitable and necessary for the controlling, directing and running such waters to their mines or manufacturing establishments, of any such person or persons, corporation or corporations, where the same may be intended to be utilized for such purposes: Provided, That no such appropriation or diversion of the waters of any such river, creek, or stream, from its natural channel, nor shall any such dam, canal, reservoir, ditch, pipe, flume, or aqueduct be constructed to the detriment of any person or persons, corporation or corporations occupying the lands or being located below the point or place of such appropriation or diversion on any such stream or its tributaries, or above or below such dam, canal, reservoir, ditch, pipe, flume, or aqueduct, or of the owners of the lands, through which the waters run in the natural course for the deprivation of the same, or the owners of the land through or upon which such dam, canal, reservoirs, ditch, pipe, flume, or aqueduct may pass through or over or be situated upon, unless just and adequate compensation be previously ascertained and paid therefor.

**§7720. The Usual Procedure.** §2. That the mode of proceeding to appropriate, take possession of and divert such waters and to build such dam, canal, ditch, reservoir, pipe, flume or aqueduct as prescribed in section one of this act, when the parties cannot agree upon the purchase thereof, shall be the same as prescribed in chapter four of an act to provide for the formation of corporations, approved, November thirteenth, eighteen hundred and seventy-three, [§7646] except that the amount of the benefits accruing to the residue of the property of the same individual or corporation, by reason of the use made of that taken, to be estimated by the parties assessing the damages, shall be deducted from the value of the property taken.

Publication of summons generally, §8441.

**AN ACT** authorizing the location, appropriation, diversion and delivery of water for domestic, manufacturing and irrigation purposes and in interstate transportation to be used at or by incorporated and unincorporated cities, towns, villages and hamlets situated partly within and partly without the State of Washington and requiring reciprocal rights from adjoining states receiving the benefits of this act. Approved February 20, 1919. L '19 ch 41.

**§7720a. Cities Across State Line.** §1. That whenever the use of water shall be necessary for domestic, manufacturing, irrigation, or in interstate transportation at or for any incorporated or unincorporated city, town, village or hamlet situated partly in Washington and partly in an adjoining state or where any city, town, village or hamlet is incorporated on one side of the state line and there are inhabitants living in adjacent and contiguous territory on the other side, it shall be lawful for any person, association or corporation to locate, appropriate, divert and deliver any of the unappropriated public waters of this state necessary for the use of such city, town, village or hamlet and the inhabitants thereof and those residing in and embracing such contiguous territory both within this state and such adjoining state; and locations may be made and authority is hereby granted for such purpose the same as for any other appropriation within the state and a diversion and delivery for such purpose shall have the same force and effect as if made for use wholly within this state and any appropriation, diversion or use heretofore made for such purpose shall be deemed as valid and legal as if made for a use wholly within this state and the priority thereof shall date from the appropriation and diversion the same as if it had been made for use wholly within this state.

**§7720b. Reciprocity Required.** §2. The provisions of this act shall not apply to any territory or the inhabitants thereof situated or located in any adjoining state which does not by its laws, usages or legal regulations grant similar or reciprocal rights, privileges and opportunities to this state and its inhabitants and adjacent and contiguous territory whether incorporated or unincorporated as in this act specified.

## EVIDENCE.

**All persons competent—who disqualified**  
§7721.

Certifications by county auditor §1650; tax deeds §1652.

Courts-martial, powers §3765-73.

Crime, bribery of witness §9050.

Depositions §7726.

Frauds, statutes of §7744.

Legislature, method of obtaining §3583.

Oaths and affirmations §7753.

Parties, examination of §7759.

Perjury and other crimes §9032.

Perpetuating testimony §7766.

Public service commission, power to procure §5602.

Records, documents, etc. §7721.

Restoration of lost, etc., court records §7780.

Telegrams §7788.

Crime to divulge, etc., telegram §8992.

Wages, assignment to be accepted in writing and recorded §3551.

Witnesses, attendance, etc. §7798.

**§7721. All Persons of Discretion Competent.** §388.—388. Every person of sound mind, suitable age and discretion, except as hereinafter provided may be a witness in any action or proceeding.

Burglary, possession of tools, §8775.

ministered in manner most binding on conscience, Const., art. 1 §6.

Constitution protects witnesses in religious belief, Const., art. 1, §11; oaths

Crime to tamper with witness §9044;



give or accept bribe, §9050.

Criminal cases, civil rules apply, §9213.  
 nesses, §9214; accused as witness, §9214.

Depositions, attendance for, §§7734, 7744.

Executions, witness must answer in supplementary proceedings, but shall not be used in criminal case §7946.

Fees, demand of, §7497; witness shall report, §§7499, 7463; when not allowed public officers, §7500.

Gambling, nickel-in-the-slot machines accessible, §9131-53.

Irrigation appliances tampered with, possession prima facie evidence, §9131-57.

Jurors as witnesses, §8512.

Justices' courts, §9494.

Larceny, possession, etc., §8944.

Mining rules and customs, §7996.

Negotiable instruments, usages and customs, §4267; agency, §4090.

Stallions at large, proof, §2073.

Telegraphic copies prima facie, §7792.

**§7722. Party to Action May Testify.** §389. No person offered as a witness shall be excluded from giving evidence by reason of his interest in the event of the action as a party thereto or otherwise but such interest may be shown to affect his credibility: Provided, however That in an action or proceeding where the adverse party sues or defends as executor administrator or legal representative of any deceased person or as deriving right or title by through or from any deceased person or as the guardian or conservator of the estate of any insane person or of any minor under the age of fourteen (14) years then a party in interest or to the record shall not be admitted to testify in his own behalf as to any transaction had by him with or any statement made to him by any such deceased or insane person or by any such minor under the age of fourteen (14) years: Provided, further That this exclusion shall not apply to parties of record who sue or defend in a representative or fiduciary capacity and who have no other or further interest in the action. L. '90 91.

Wife claiming community interest cannot testify to transactions with deceased husband, *Brown v. Davis* 98 W. 442.

Patients book of physician admitted though defendant dead or incompetent, *Sanborn v. Dentler* 97 W. 149.

Statute does not apply to contracts concerning the estate made since death, *Hart v. Bogle* 88 W. 125.

In action for specific performance vendor cannot testify that he informed deceased that contract was forfeited, *Shorett v. Knudsen* 74 W. 448.

Statements of deceased to third persons "in his presence" are not competent, *Nicholson v. Kilbury* 80 W. 500.

Permitting plaintiff to testify deceased delivered deed to plaintiff in presence of another is error, *White v. Walker* 84 W. 652.

Affidavit of deceased against interest admitted to show lost deed to defeat heirs, *Margett v. Wilson* 85 W. 98.

Does not apply to officer of corporation—deposition before death, *Beaston v. Portland Tr. & Sav. Bank* 89 W. 627.

Identification by payor of signature of deceased to receipts for money not within the statute, but cannot testify to lost receipt—book kept by defendant is inadmissible, *Goldsworthy v. Oliver* 93 W. 67.

Two persons adverse to decedent may testify one for the other, *Showalter v. Spangle* 93 W. 326.

In an action by the heir of a grantor in a deed of gift, testimony of the grantee that he had possession of the deed very

Capacity of children in discretion of court, *State v. Myrberg* 56 W. 384.

Court will take judicial notice of its appointment of guardian ad litem, *Hale v. Crown Columbia P. & P. Co.* 56 W. 236.

In cross-examination of defendant's alleged accomplice he may be asked if ever "convicted" not "arrested" for felony, *State v. Ripley* 32 W. 182.

Accessory before the fact is not competent on trial of principal, *Edwards v. Territory* 1 W. T. 195.

Testimony of prosecuting witness adjudged insane on same day as verdict rendered will be rejected, *State v. Smith* 26 W. 354.

After prosecutrix in trial for rape had testified it was in discretion of the trial court to strike her evidence because she did not understand oath, *State v. Bailey* 31 W. 89.

soon after its date and had kept it ever since, is not inadmissible, *Bardsley v. Truax*, 64 W. 400.

One suing administrator for money advanced deceased may not testify that deceased checked over his account and said it was correct, *Robertson v. O'Neill*, 67 W. 121.

Mutual benefit society defending on ground of fraud of deceased is not within the statute, *Erickson v. Modern Woodmen* 43 W. 242.

Plaintiff disqualified to explain conditions of bond and writings made with deceased, *Reynolds v. Reynolds* 42 W. 107.

Former partner disqualified, *Shaw v. Lobe* 58 W. 219.

Prospective heir not a party in interest, *In re Sloan's Estate* 50 W. 86.

Executrix may testify—whether notes had been changed, *O'Connor v. Statter* 48 W. 494.

Plaintiff prohibited explaining book account as being evidence of payments, *Smith v. Scott* 51 W. 330.

Employee of street car company is not party in interest against deceased to preclude his testimony in action against company for his negligence, *O'Toole v. Faulkner* 24 W. 371.

Deposition competent, death of either party does not make it incompetent, *Nels v. Farquharson* 9 W. 508.

Mother of deceased has equitable title to realty because of funds furnished decedent to purchase. Party in possession not competent to alleged oral agreement between himself and decedent, *Smith v.*

Taylor 2 W. 422.

Domestic allowed to testify and give books of account in evidence in action to recover services as a domestic for decedent, *Ah How v. Furth* 13 W. 550.

Defendants can not testify to alteration of promissory note after death of payee, *Wolferman v. Bell* 6 W. 84.

Defendant depends on title through deceased adverse party, can not testify to agreement with deceased, *Spencer v. Terrell* 17 W. 514.

Rule will exclude stockholder of a corporation, *Gilmore v. H. W. Baker Co.* 12 W. 468.

Wife can not testify as to transactions between deceased and her husband, *Whitney v. Priest* 26 W. 48.

Action to recover profits from investments in realty with decedent, plaintiff could properly testify his inspection of certain lots and their value, *Marvin v. Yates* 26 W. 50.

Evidence must be objected to before given, *Newman v. Buzard* 24 W. 225.

If witness not a party to the action evidence is admissible, *Sackman v. Thomas* 24 W. 660.

Testimony of sister of deceased establishing a partnership between them is prohibited, *In re Alfstad's Estate* 27 W. 175.

**§7723. Conviction of Crime Shown to Affect Credibility.** §390. No person offered as a witness shall be excluded from giving evidence by reason of conviction for crime, but such conviction may be shown to affect his credibility: Provided, That any person who shall have been convicted of the crime of perjury shall not be a competent witness in any case, unless such conviction shall have been reversed, or unless he shall have received a pardon. L '91 33.

Widow defendant in action to quiet title disqualified as to statements of husband as to his interest in property, *Dempsey v. Dempsey* 61 W. 632.

Statute is retroactive—laches in perpetuating testimony, *Kenney Presbyterian Home v. Kenney* 45 W. 106.

Surviving partner not disqualified, *Kaufman v. Baillie* 46 W. 248.

Does not disqualify administratrix, *O'Connor v. Slatter* 46 W. 308.

One partner insane adverse party cannot testify to who composed the partnership, *Chlopeck v. Chlopeck* 47 W. 256.

What transpired at settlement of account with deceased inadmissible, *Moylan v. Moylan* 49 W. 341.

Prohibition follows contract assigned, *Preston v. Hill-Wilson Shingle Co.* 50 W. 377.

One spouse cannot testify to marriage with deceased, *Nelson v. Carlson* 48 W. 651.

Defendant may show interest if any prosecuting witness may have in his disqualification, *State v. Eald* 55 W. 302.

In cross-examination of defendant's alleged accomplice he may be asked if ever

**§7724. Persons Not Qualified.** §391.—391. The following persons shall not be competent [to] testify:

1. Those who are of unsound mind, or intoxicated at the time of their production for examination and

2. Children under ten years of age, who appear incapable of receiving just impressions of the facts, respecting which they are examined, or of relating them truly.

Death of one of adverse parties does not preclude evidence of transactions with the others, *Raub v. Scholl* 19 W. 30.

Indorser of note to decedent who in turn indorsed to plaintiff can not testify—nor can testimony be given against co-partnership if decedent was co-partner and others not present, *Bay View Brewing Co. v. Grubb* 31 W. 34.

Officers of a bank not parties to a note given by a stockholder to a deceased person to protect him against loss by purchase of bank's assets, may testify, *Carr v. Jones* 29 W. 78.

In action by administrator against son of deceased for appropriation of property, brother of defendant is competent, *McCoy v. Ayers* 2 W. T. 307.

Conductor of train authorized to direct workmen in removing landslide from track may testify regarding conversation with deceased as part of res gestae in action to recover for death by being swept into river by additional landslide, *Slavens v. Northern Pacific Ry. Co. (C. C. A.)* 97 Fed. Rep. 255.

Evidence that deed made by decedent does not contain all of land contracted for is inadmissible, *Kline v. Stein* 30 W. 189. Cited 88 W. 61.

No other showing than conviction of felony can be made, *State v. Strodemeier* 40 W. 608.

Witness may be asked if he has been convicted of felony, *State v. Champoux* 33 W. 339.

There must be legal conviction to disqualify witness, *State v. Pearson* 37 W. 405.

Conviction of perjury although erroneous excludes the witness, *State v. Harris* 22 W. 57.

Conviction of a misdemeanor can not be shown, *State v. Payne* 6 W. 563.

Former conviction shown by production of the judgment, *id.*

Former conviction may be shown against dying declaration, *State v. Baldwin* 15 W. 15.

Former conviction for misdemeanor cannot be proven to affect credibility—defendants former conviction, *State v. Payne*, 6 W. 563.

Persons under conviction for perjury not competent although judgment erroneous, *State v. Harras*, 22 W. 57.

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Evidence of prosecutrix under ten years sustained, *State v. Smith* 95 W. 271.

Children should be sworn, *Hodd v. Tacoma* 45 W. 436.

**§7725. Persons in Certain Relations Not Qualified.** §392—392. The following persons shall not be examined as witnesses:

1. A husband shall not be examined for or against his wife, without the consent of the wife, nor a wife for or against her husband without the consent of the husband; nor can either during marriage or afterward, be, without the consent of the other, examined as to any communication made by one to the other during marriage. But this exception shall not apply to a civil action or proceeding by one against the other, nor to a criminal action or proceeding for a crime committed by one against the other.

2. An attorney or counsellor shall not, without the consent of his client, be examined as to any communication made by the client to him, or his advice given thereon in the course of professional employment.

3. A clergyman or priest shall not, without the consent of the person making the confession, be examined as to any confession made to him in his professional character, in the course of discipline enjoined by the church to which he belongs.

4. A regular physician or surgeon shall not, without the consent of his patient, be examined in a civil action as to any information acquired in attending such patient, which was necessary to enable him to prescribe or act for the patient.

5. A public officer shall not be examined as a witness, as to communications made to him in official confidence, when the public interest would suffer by the disclosure.

Consent of patient necessary, *Blackwell v. Seattle* 97 W. 679.

Applies to alienation of affections—deposition suppressed, *Lyen v. Lyen* 98 W. 498.

Cited *Rubens v. Rubens* 101 W. 675.

Privileged testimony not prejudicial if there is other evidence, *Askey v. New York Life Ins. Co.* 102 W. 27.

Physician may testify to examination not at instance of patient, also the extent of examination at patient's instance, *Stafford v. Nor. Pac. R. Co.* 95 W. 450.

In action by wife for alienation of affections of husband the statute applies, *Jones v. Jones* 96 W. 172.

Party seeking to compel executor to inventory property as community property is adverse to deceased—testimony not adverse admissible, *In re Cunningham's Estate* 94 W. 191.

Privilege does apply to divorced persons relating to facts not induced by confidential relations, *State v. Snyder* 84 W. 485.

Physician may testify as witness to will, *Points v. Nier* 91 W. 20.

Physician not permitted to testify though patient testified, *Wessler v. Great Northern R. Co.* 90 W. 234.

Does not prevent cross-examination of a physician charged with abortion requiring him to state the nature of a certain operation performed by him upon a woman, *State v. Stapp*, 65 W. 438.

Attorney compelled to disclose who employed him and terms of employment, *Collins v. Hoffman*, 62 W. 278.

Attorney's oath to keep secrets of client, §164.

Bigamy is not crime of one spouse against the other, *State v. Kniffen* 44 W. 485.

Testimony by plaintiff of injuries does not release that of physician, *Noelle v.*

*Hogulam L. & S. Co.* 47 W. 519.

Letters from client to attorney are not privileged in action between them, *Stern v. Daniel* 47 W. 96.

Defendant permitted wife to testify thereby waiving privilege, *State v. Frye* 45 W. 645.

Wife cannot testify against husband in charge of arson for burning her barn, *State v. Kephart* 56 W. 561.

Husband required to testify in supplementary proceedings where community property involved, *Belknap v. Platter* 54 W. 1.

Wife not competent in charge of incest against husband, *State v. Beltner* 60 W. 397.

Wife after divorce may testify to facts occurring after divorce—adulterous wife not on trial, husband competent—letters offered by state not privileged, *State v. Nelson* 39 W. 221.

Prohibition extends only to evidence induced by marital relation and not to business, *Sackman v. Thomas* 24 W. 660; *Frankenthal v. Solomonson* 20 W. 460.

Objection to evidence must be specific, *id.*

Information by client and third party attorney can not testify in action where third party is interested without his consent, *Hartness v. Brown* 21 W. 655.

Fraud as affecting privilege, *id.*

Attorney may testify to authority to compromise judgment, *Williams v. Blumenthal* 27 W. 24.

Attorney may disclose by whom he was employed, *Stanley v. Stanley* 27 W. 570.

One spouse can not testify against the other, *Stanley v. Stanley* 27 W. 570; *Speck v. Gray* 14 W. 589.

Defamatory words spoken to officer are not privileged unless for the purpose of preventing or detecting crime, *Stewart v. Major* 17 W. 238.

Where party testifies to information re-

received from counsel he may be cross-examined. *Hall & Paulson Furn. Co. v. Willbur* 4 W. 644.

Where husband calls wife she may be cross-examined. *Columbia Co. v. Hawthorne* 3 W. T. 353.

### EVIDENCE—DEPOSITIONS.

Interrogatories to parties to action §7760. Perpetuating testimony §7766.  
Parties to action, interrogatories §7760. Trial evidence re-used when §7740.

**§7726. Grounds of Taking Depositions.** §409.—409. The testimony of a witness may be taken by deposition, to be read in evidence in an action, suit or proceeding commenced and pending in any court in this state in the following cases:

1. When the witness resides out of the sub-district, and more than twenty miles from the place of trial.

2. When the witness is about to leave the sub-district, and go more than twenty miles from the place of trial, and there is a probability that he will continue absent when the testimony is required.

3. When the witness is sick, infirm or aged so as to make it probable that he will not be able to attend at the trial.

4. When the witness resides out of the State.

Adversary examined before trial, §7759.

Justices' courts, §9503.

Perjury, §9032.

Specific performance of decedent's realty contracts, §10011.

Perpetuating testimony, §7766; re-use of trial evidence, §7770.

Objections to depositions must be specific. *State Bank of Clarkston v. Morrison* 85 W. 182.

Notice must state the name of witness. *Donaldson v. Winningham* 54 W. 19.

Use of under amended pleadings, *Miner v. Paulson* 60 W. 150.

Notice of motion to publish not necessary—complaint amended will not exclude—opened by mistake will not destroy, *Mendenhall v. Kratz* 14 W. 453.

Practice applies to Federal courts, *Smith v. Northern Pacific Ry.* 110 Fed. Rep. 341.

**§7727. Depositions out of the State—Commission.** §412.—412. Depositions may be taken out of the State, by a judge justice or chancellor or clerk of any court of record, a justice of the peace, notary public, mayor or chief magistrate of any city or town, or any person authorized by a special commission from any court of this State.

**§7728. Time Deposition May Be Taken.** §410.—410. Either party may commence taking testimony by depositions at any time after service of summons upon the defendants.

Granting of commissions, §7735.

After open commission for plaintiffs, court refused second commission on appli-

cation of defendant supported by affidavits showing evidence would not change result, *O'Callaghan v. O'Brien* 116 Fed. Rep. 934.

**§7729. Use of Depositions—Objections at Taking—Amendments By Witness.** §418.—418. Such deposition may be used by either party upon the trial or other proceeding, against any party giving or receiving the notice, subject to all legal exceptions, to the competency or credibility of the witness, or the manner of taking the deposition. But if the parties attend at the examination, no objection to the form of an interrogatory shall be made at the trial, unless the same was taken at the time of the examination. It shall be the duty of the person taking the deposition, to propound to the witness every question proposed by either party, and to note all objections to the form of any interrogatory, and when any interrogatory is objected to on account of form, unless the form is amended and the objection waived, he shall write after the question and before the answer, the words "objected to," and when any witness declines to answer a question on the ground that it will tend to criminate himself, that fact shall also be noted after the question, if written down. The deposition may be taken in the form of a narrative, or by question and answer, or partly in either form, as either party present at the examination shall require. When taken by question and answer, the officer shall first write down the question and then the answer, as nearly as may be in the language of the witness; but when the deposition is read to the witness, previous to signing it, he shall be permitted to amend his answer to any question, or any part of his deposition; such amendment however, unless both parties shall otherwise agree, shall not be made by way of interlining or erasing, but shall be added at the end of the deposition under the title "amendment by the witness," and such amendment shall intelligibly refer to the part so amended. 2285



Objection must be made to evidence to save question at trial, *Sanborn v. Dentler* 97 W. 149.

Party taking is not bound by statements against his interests—party offering is bound—parts included, *Von Tobel v. Stetson & Post Mill Co.* 32 W. 683.

**§7730. Sufficient Cause Shown Deposition May Be Used.** §419.—419. No deposition shall be used if it appear that the reason for taking it no longer exists: Provided, however, That if the party producing the deposition in such case shall show any sufficient cause then existing for using such deposition, it may be admitted.

Causes that may be shown, §7739; re-use of trial evidence, §7770.

**§7731. Deposition May Be Used in Subsequent Action.** §420.—420. When the plaintiff in any action shall discontinue it, or when it shall be dismissed for any cause, and another action shall afterwards be commenced for the same cause, between the same parties, or their respective representatives, all depositions lawfully taken in the first action may be used in the other, in the same manner and subject to the same conditions and objections as if originally taken for such other action: Provided, That the deposition shall have been duly filed in the court where the first action was pending, and shall have remained in the custody of the court, from the termination of the first action until the commencement of the other.

**Amendatory—AN ACT** in relation to evidence in actions and judicial proceedings, and amending Sections 390, 393, 406, 407, 408, 423 and 425, of the Code of Washington, of 1881. Approved February 24, 1891. Laws '91 p 33.

**§7732. Depositions in the State on Notice.** §7. Either party may have the deposition of a witness taken in this state before any judge of the superior court, justice of the peace, clerk of the supreme or superior court, mayor of a city, or notary public, by serving on the adverse party or his attorney previous notice of the time and place of examination. The notice shall be served such time before the time when the deposition is to be taken as to allow the adverse party sufficient time by the usual route of travel to attend, and three days for preparation, exclusive of the day of service, and the examination may, if so stated in the notice, be adjourned from day to day. The notice shall specify the action or proceeding, the name of the court or tribunal in which the deposition is to be used, and the time and place of taking the deposition. It shall be served upon the adverse party, his agent, or attorney of record, or be left at his usual place of abode.

Commission in the state, §7735; notice, §7432. complain of insufficient notice, *Hobart v. Jones* 5 W. 385.

Defendant obtaining continuance can not

**§7733. Notice—Time May Be Shortened.** §8. The court, or a judge thereof, or in an action or proceedings before a justice of the peace, the justice, may, upon sufficient cause being shown by affidavit, prescribe a shorter time for notice than that specified in the last preceding section. A copy of the order shortening the time must be served with the notice.

**§7734. Witness Compelled to Go Twenty Miles.** §9. Any witness may be subpoenaed and compelled, by any officer authorized to take depositions, to appear and give his deposition at any place within twenty miles of the abode of such witness, in like manner as he may be subpoenaed and compelled to attend as a witness in any court, and he shall suffer the same penalties for a failure to attend as are prescribed in section fifteen hundred and eighty-seven [§7804].

Distance attendance required, §7798; court shall compel, §7741.

**§7735. Commissions, Open and by Interrogatories.** §10. Any superior court in this state, or any judge thereof, is authorized to grant a commission to take depositions within or without this state. The commission must be issued to a person or persons therein named, by the clerk, under the seal of the court granting the same, and depositions under it may be taken upon written interrogatories or upon oral questions or partly upon oral and partly upon written interrogatories. Before any such commission shall be granted, the person intending to apply therefor shall serve upon the adverse party a notice of his intention to make such application, stating the time when and the place where, such application will be made, which notice shall

be served in the same manner and for the same time as provided in section 1668 [§7732], unless the court or judge, for sufficient cause shown by affidavit, prescribe a shorter time. At the time the application is presented, the court or judge shall settle the interrogatories, if any have been served and the parties have not settled the same. The clerk, upon issuing the commission, shall attach the interrogatories thereto, if any have been agreed upon or settled by the court, and immediately forward the same to the commissioner. At least five days' notice must be given to the party or witness to be examined out of the state, in case such examination shall be had upon oral interrogatories, and the person, before whom the deposition of the witness shall be taken, shall have the same power to compel the attendance of such parties or witnesses as any person authorized to take such deposition, within this state. L. '97 206.

Court may direct method of taking deposition, State ex Geissler v. Truax 96 W. 1. Second commission when first abortive, Donaldson v. Winningham, 62 W. 212.

Opinion witnesses properly limited to three, Terrill v. Fotheringham 103 W. 748. Shorter time, §7733. Depositions on notice, §7732.

**§7736. Publication of Notice—Proof of Service.** §11. When the party against whom the deposition is to be read is absent from or a non-resident of the state, and has no agent or attorney of record therein, he may be notified of the taking of the deposition of the application for a commission, by publication. The publication must be made three consecutive weeks, in some newspaper printed in the county where the action or proceeding is pending, if there be any printed in such county, and if not, in some newspaper printed in this state, of general circulation in that county. The publication must contain all that is required in the written or printed notice, and may be proved in the manner prescribed in case of the publication of summons.

Publication of summons, §8441.

**§7737. Writing Deposition—Form of Certificate.** §12. The deposition shall be written by the officer taking the same, or by the witness, or by some disinterested person, in the presence and under the direction of such officer. When completed, it shall be carefully read to or by the witness, corrected if desired, and subscribed by him. If taken upon notice it shall be certified by the officer substantially as follows:

State of Washington, County of \_\_\_\_\_, ss.

I, A. B., justice of the peace in and for said county (or judge, clerk, etc., as the case may be), do hereby certify that the above deposition was taken before me, and reduced to writing by myself (or witness, as the case may be), at \_\_\_\_\_, in said county, on the \_\_\_\_\_ day of \_\_\_\_\_, 18— at \_\_\_\_\_ o'clock, in pursuance of notice hereto annexed; that the above named witness, before examination, was sworn (or affirmed) to testify the truth, the whole truth, and nothing but the truth, and that the said deposition was carefully read to (or by) said witness, and then subscribed by him.

A. B., Justice of the Peace.

Dated at \_\_\_\_\_, the \_\_\_\_\_ day of \_\_\_\_\_ 18—.

If the deposition be taken upon a commission, the commissioner shall certify it in substantially the same manner, and annex to it the commission and interrogatories.

Answers written beneath original interrogatories comply with statute, Armstrong v. Yakima Hotel Co. 75 W. 477.

Amendments by witness, §7729. Certificate held sufficient, Hobart v. Jones 5 W. 385.

**§7738. Inclosure, Address and Transmission.** §13. The deposition, whether taken upon notice or upon a commission, shall be enclosed in a sealed envelope, by the officer taking the same, and directed to the clerk of the court, arbitrators, referee or justice of the peace before whom the action is pending, or to such persons as the parties, in writing may agree upon, and either delivered to the clerk of the court or other person, or transmitted through the mail or by some private person.

**§7739. When Depositions May Be Used on Trial.** §14. If it appear at the trial that the reason for taking the deposition no longer exists, the depo-



sition shall not be read in evidence unless the party offering it show that another of the causes specified by section fifteen hundred and ninety-eight [§7726] then exists, or that the witness is dead, or cannot safely attend at the trial on account of sickness, age or other bodily infirmity.

Publication of depositions (court rules) §8431t. Reasons for taking depositions will be presumed to continue, *Hennesy v. Niagara*

Any sufficient cause, §7730. Fire Ins. Co. 8 W. 91.

**§7740. Depositions Used on Appeal or Change of Venue.** §15. When any action shall have been appealed from one court to another, and is to be tried anew in the appellate court, all depositions lawfully taken to be used in the court from which the appeal was taken may be used in the appellate court in the same manner and subject to such exceptions for informality or irregularity, and none other, as were taken in writing to such depositions in the court below; and when an action is removed from one court to another by change of venue all depositions previously taken in the action must be certified to the court to which the action is removed, and may be used in that court in the same manner and subject to the same exceptions as if originally taken for use therein.

**Supplementary—AN ACT giving the Superior Court jurisdiction to enforce the attendance of witnesses before notaries public, justices of the peace and other officers authorized to take depositions; providing for punishment of witnesses failing to obey the order of the court.** Approved February 28, 1901. Laws '01 p 23.

**§7741. Deposition—Superior Court Shall Compel Attendance of Witnesses.** §1. That the superior court shall have power to compel the attendance of witnesses, within this state, before notaries public, justices of the peace or any other person authorized by the laws of this state to take depositions in causes pending in any court of the state, or in any court of any other state, or in any court of the United States, or in any court of a foreign country.

**§7742. Report of Officer to Superior Court.** §2. The officer before whom the deposition is to be taken in case of the refusal of any witness to attend or testify shall report to the superior court in and for the county in which the witness resides, or is found, by petition, that due notice has been given of the time and place of taking the depositions and that the witness have been summoned in the same manner that witnesses are now summoned to appear and testify in the superior court of this state; and the fees and mileage of the witness has been paid, or tendered to the witness, for his attendance and testimony, and that the witness has failed and refused to attend or testify before such officer, in the cause mentioned in the notice and the subpoena; and ask an order of the court compelling the witness to attend and testify before such officer.

**§7743. Order to Witness—Contempt.** §3. The court upon the petition of the officers, and the payment of the regular docket fee of four dollars (\$4) shall enter an order directing the witness to appear before the officer making the report, at a time and place to be fixed by the court in such order, and then and there give his testimony in such cause. A copy of which order shall be served upon the witness in the same manner that summons and complaints are now served; and on failure or refusal of the witness to obey such order such witness shall be dealt with as for contempt.

Contempts generally, §7442.

## EVIDENCE—FRAUDS, STATUTES OF.

Bailees, record, etc., of property §3650.

Bulk sales act §7749.

Conveyances, etc., to one's own use void §7744.

Deeds §1909.

Goods, etc., sale how evidenced §7746.

Tariffs, published, overcharge recovered §7752.

Telegraphic contracts, etc., are in writing §7788.

Writing, certain contracts shall be in §7745.

**AN ACT to prevent fraudulent conveyances.** Approved December 6, 1881.

CS1 §§2325-27.

**§7744. Transfers to One's Own Use Void. §2324.—I.** That all deeds of gift, all conveyances, and all transfers or assignments, verbal or written, of goods chattels or things in action, made in trust for the use of the person making the same, shall be void as against the existing or subsequent creditors, of such person.

Subsequent creditor cannot impeach deed from husband to wife, *Smith v. Weed* 75 W. 452.

Escrow agreement not performed does not satisfy statute, *King v. Upper* 57 W. 130.

Showing of facts amounting to fraud necessary in seeking damages or enforcement of contract not to be performed within one year and not complying with statute, *Johnson v. Upper* 38 W. 693.

Whether chattel mortgage fraudulent submitted to the jury on the facts—fraud in law, *Adams v. Dempsey* 35 W. 80.

This section does not prohibit conveyances to creditors whether for preference or not, *Samuel v. Kittinger* 6 W. 268.

Creditors may show that the possession of third party with bill of sale is the possession of the debtor, *Sayward v. Nunan* 6 W. 87.

Claimant for damages sounding in tort is "creditor" to question fraudulent conveyances, *Bates v. Drake* 28 W. 447.

Insolvency of grantor is shown when he has no other property in jurisdiction, *Bates v. Drake* 28 W. 447.

Mortgagee with possession under oral agreement to apply proceeds to debt has valid mortgage, *Benham v. Ham* 5 W. 128.

**§7745. What Contracts Shall Be in Writing. §2325.** In the following cases, specified in this section, any agreement, contract, and promise shall be void, unless such agreement, contract or promise, or some note or memorandum thereof, be in writing, and signed by the party to be charged therewith, or by some person thereunto by him lawfully authorized, that is to say: 1. Every agreement that by its terms is not to be performed in one year from the making thereof; 2. Every special promise to answer for the debt, default, or misdoings of another person; 3. Every agreement, promise or undertaking made upon consideration of marriage, except mutual promises to marry; 4. Every special promise made by an executor or administrator to answer damages out of his own estate; 5. An agreement authorizing or employing an agent or broker to sell or purchase real estate for compensation or a commission. L. '05 110

Agreement to pay for past services not within statute relating to brokers, *Hennberg v. Cook*, 103 W. 685.

Contract between person holding "option" and subagent is not within the statute, *Maloney v. Montana Ranches Co.* 106 W. 156.

"Hillcrest Ranch below Pullman," parts of 5 sections of land insufficient description for broker's commission, *Larue v. Farmers & Mech. Bank* 102 W. 434.

Promisor liable agreeing to pay old printing bill in consideration of forbearance and continuance of printing of periodicals, *Washington Printing Co. v. Osner* 99 W. 537.

Description as "near Catalda, Idaho, insufficient—reference to agreement for exchange of property does not aid, *Nance v. Valentine* 99 W. 323.

Description by section, township and range insufficient, *Rogers v. Lippy* 99 W. 312.

Declarations of mortgagor are admissible in evidence—court should not in instructions leave question of good faith for jury—preponderance of evidence, *Adams v. Dempsey* 22 W. 284.

Failure to make provision in chattel mortgage for application of proceeds to debt is not fatal and facts may be shown, *Dillon v. Dillon* 13 W. 594.

Fact that mortgagee consents to extension and payment of small part of proceeds to third parties does not invalidate mortgage, *Sanders v. Main & Winchester* 12 W. 665.

If purchaser recognizes mortgage he can 30.

That plaintiff has security is not defense to action to set aside deed, *Davis v. Oldakers* 3 W. T. 593.

Requirement of filing inventory of separate property of married persons is a statute of frauds *Rosencrans v. Territory* 2 W. T. 267.

Creditor must have lien or judgment before fraudulent conveyance can be set aside, *Thompson v. Caton* 3 W. T. 31.

Knowledge of agent of mortgagee of mortgagor's fraudulent intent is chargeable to mortgagee, *Wells v. McMahon* 3 W. T. 532.

Verbal promise of railroad or representative to see that subcontractor is paid is void, *Dixon v. Parker, Moran & Parker* 102 W. 101.

Agreement to pay debt to third party is not within the statute—action by third party, *Hart v. Bogle* 88 W. 125.

Promise to pay in consideration of mortgage securing indebtedness is not within the statute, *Union Machinery & S. Co. v. Darnell* 89 W. 226.

One creditor agreeing with others to take plant and pay \$4,000, on lienable claims, agreement with non-lien creditor is within the statute, *Campbell v. Weston Basket & Barrel Co.* 87 W. 73.

Agreement to pay seller's stock note as part of purchase price is not within statute, *Ginnett v. Greene* 87 W. 40.

Executed contract for sale of logs sustained, *Hughes v. Eastern R. & Lum. Co.* 93 W. 558.

Amount of broker's commission must be



in writing, Orr Co. v. Interlaken Land Co. 74 W. 340.

Oral contract for five years sustained no objection being made to evidence and no assignment of error, Seattle Taxicab & T. Co. v. Kinney 74 W. 179.

Standing timber is "real estate"—broker's contract must describe property and state amount of commission, Engleson v. Port Crescent Shingle Co. 74 W. 424.

Agent may be authorized by parol to purchase real estate, Stewart v. Preston 77 W. 559.

No description of timber lands—memorandum bad—part performance—quantum meruit—pleadings, Cushing v. Monarch Timber Co. 75 W. 678.

Broker's contract describing the land as "seventy-nine acres" in certain section bad—defective contract not shown in pleadings may be objected to at any time, Thompson v. English 76 W. 23.

Course of dealing wherein defendant paid bills of N. after notice to plaintiff to send bills to N., various assertions of defendant held collateral and within the statute, Pressentin v. Hawkeye Timber Co. 77 W. 388.

Landlord held to pay tenant's debt on the facts, Lovell v. Haye 85 W. 109.

Purchaser from F. stating to J. he would see that J. "got its money" is within statute, First Nat. Bank v. Geske & Co. 85 W. 477.

Oral agreement on marriage that survivor should have no interest in decedent's estate void, Koontz v. Koontz 83 W. 180.

Contract to pay commission "as agreed upon" void, Houtchens Co. v. Nichols 81 W. 238.

Broker's contract must as definitely describe property as if seeking specific performance, Baylor v. Tolliver 81 W. 257; Salin v. Roy id. 261.

Commissions retained by broker under void contract and charged by plaintiff to himself cannot be recovered by the plaintiff, Modern Irr. & L. Co. v. Neely 81 W. 38.

Statute does not apply to contract of brokers to divide commission, Armstrong v. Webber & Co. 92 W. 295.

Sale of standing timber within the statute, France v. Deep River Logging Co. 79 W. 336.

Oral agreement between plaintiff, his brother and defendant whereby defendant agreed to pay the brother's debt to plaintiff in consideration of plaintiff shipping the brother's goods to defendant is not within the statute, Greenbaum v. Stern 90 W. 156.

Oral contract of manager of bank operating lumber company for two years is not contract to answer for debt of another, but is void, though partly performed, because not to be performed within one year—recovery on quantum meruit, Union Savings & Tr. Co. 88 W. 20.

Indivisible contract for exchange of realty and personalty is within statute, Godefroy v. Hupp 93 W. 371.

Where partnership interest not capable of manual delivery statute held not to apply, Gaisell v. Johnson, 68 W. 470.

Principal creditor agreeing to pay for contractor is an original promise, McKay v. Northern Bank & Tr. Co., 69 W. 186.

Broker did not have exclusive contract.

could not recover if owner sold, Hammond v. Mau, 69 W. 204.

Promise of vendee to pay balance on mortgage is original, Bicknell v. Henry, 69 W. 408.

Judicial sales are not within the statute, Rice v. Ahlman, 70 W. 12.

Promise of agent of indemnity company to pay made prior to payment by insured is within the statute, Ford v. Aetna Co., 70 W. 29.

Where pleading does not disclose facts defense of statute may be made without pleading, Taylor v. Howard, 70 W. 217.

Oral contract sustained where both parties submitted evidence, Stocking v. Boyer, 70 W. 615.

Oral contract between brokers to divide commissions not within statute, Orr v. Perky Inv. Co., 65 W. 281.

An executory written agreement may be modified or abrogated by a partly performed oral agreement, Gerard-Fillio Co. v. McNair, 68 W. 321.

A letter to a broker authorizing the sale of real property at a stated price but failing to state the amount of the commission is insufficient, Crouch v. Forbes, 63 W. 564.

Promise of president of a society to pay costs, the society refusing to defend, is an original promise, Mazzini Society v. Coriat, 63 W. 273.

Does not apply where owner promises to pay contractor's debt if creditor will not file lien, Wells & Morris v. Brown, 67 W. 351.

Applies to any collateral promise to pay another's debts, even if the debtor is a corporation virtually owned by the promisor, Goldie-Klenert Dist. Co. v. Bothwell, 67 W. 264.

Does not apply to commission agreements between two brokers, Leigh v. Yancey, 67 W. 18.

Does not apply to a direct promise to settle account on furnishing promisor future goods, Davies v. Carey 72 W. 537.

A contract by a joint owner of real estate for the employment of a broker to procure a purchaser of real estate must be in writing to be enforceable, Parker v. Bruggemann, 72 W.

A broker is entitled to a commission on an oral agreement to find a purchaser for a cafe, when the seller desired, and received, real property as payment therefor, Merrit v. American Catering Co., 71 W.

Contract for sale of specific property does not allow broker's fee for different property, Reitz v. Bryant, 71 W.

Does not apply to oral agreement to advance money and bid in property in trust, McSorley v. Bullock, 62 W. 140.

Memorandum of employment of realty broker insufficient, Swartswood v. Naslin 57 W. 287.

Contract of sale providing for "agreed on commissions" does not satisfy statute, Forland v. Boyum 53 W. 421; affirmed, Goodrich v. Rogers 75 W. 212.

Applied Brown v. Kausche 98 W. 470.

Act is not retroactive, Dean v. Williams 56 W. 614.

Agreement to give brokers all over fixed sum is within the statute, Broderius v. Anderson 54 W. 591.

Party liable cannot be shown by parol,

McCrea v. Ogden 54 W. 521.

Broker's contract void is sufficient consideration for written agreement, Muir v. Kane 55 W. 131.

Parol sale, and custom of title not passing until delivery is within the statute, Peacock Mill Co. v. Honeycutt 55 W. 18.

Defense of want of writing must be specially pleaded, Moses Land etc. Co. v. Stock-Gibbs Lum. Co. 56 W. 529.

Letters fixing price and giving time for sale do not satisfy statute, Lawson v. King 56 W. 15.

Vendor cannot be held for commission without writing—finding purchaser, Hege, Hachez, Phillips & Co. v. Hessel 57 W. 499.

Statement by employee of insurance agent not in writing guaranteeing insurer of no force Beckman v. Edwards 59 W. 411.

Clear evidence must be coupled with part performance to take case out of statute, Towner v. Blue 59 W. 164.

Surety signing building contract is within the statute and void—no reformation, Mead v. White 53 W. 638.

Memorandum with broker must contain agreement for payment, Foote v. Robbins 50 W. 277.

Written authority to broker and agreement to convey may be specifically enforced, Littlefield v. Dawson 47 W. 644.

Agent taking title is estopped pleading statute, Kennedy v. Anderson 49 W. 14.

Note of instruction to broker not containing terms of contract does not satisfy statute—part performance, Keith v. Smith 46 W. 131.

Agreement of purchaser of mortgaged chattels to pay the mortgage is not within the statute, Gay v. Schaefer 52 W. 269.

Credit given to party charged and there was purpose to enable third party to serve party charged, held not within statute, Burns v. Bradford-Kennedy Lum. Co. 61 W. 276.

Agreement of vendor not to declare forfeiture for five years if vendee would remain and plant orchard is void, Spokane Canal Co. v. Coffman 61 W. 357.

Contract between brokers to divide commission not within statute, Jones v. Kehoe 61 W. 422.

Authority of broker to execute written contract need not be in writing—specific performance, Pierce v. Wheeler 44 W. 326; 45 W. 464.

Memorandum "commission to be paid when second payment is made to M. & M. \$625," satisfies statute, McCrea v. Ogden 50 W. 495.

§7746. How Sales of Goods to be Evidenced. §2326.—3. No contract for the sale of any goods, wares, or merchandise, for the price of fifty dollars, or more, shall be good and valid, unless the purchaser shall accept and receive part of the goods so sold, or shall give something in earnest to bind the bargain, or in part payment, or unless, some note, or memorandum in writing of the bargain be made and signed by the party to be charged thereby, or by some person thereunto by him lawfully authorized.

Defense of statute waived if not interposed in time—delivery as directed is delivery, First Nat. Bank v. Geske & Co. 85 W. 477.

Corporate stock sale is within statute—resignation with third party and agreement to accept employment is not part

Full performance by broker will not satisfy statute, Briggs v. Bounds 48 W. 579.

Act not class legislation—memorandum must have terms of contract, Ross v. Kaufman 48 W. 678.

Promise of bank officers to repay money loaned by bank must be in writing, First National Bank v. Gaddis 31 W. 596.

Oral agreement to prospect for mines is not within statute—one prospector may compel division, Mack v. Mack 39 W. 190.

Contract for nominal administration is not within the statute, In re Field's Estate 33 W. 63.

Trust relation and part performance takes case from the statute, Borrow v. Borrow 34 W. 684.

If there is a consideration between promisor and promisee the promise is not within subd. 2, Gilmore v. Skookum Box Factory 20 W. 703.

Agent drew orders on defendant, the latter verbally agreed to apply what was due agent on the orders, held that agreement of defendant is within subd. 2, Barto v. Phillips 28 W. 482.

Contract is signed if name of party charged is written in it anywhere by himself or agent, Tingley v. Bellingham Bay Boom Co. 5 W. 644.

Promise of owner of building to pay third party after contractor had absconded is not within the statute, Dibble v. De Mattos 8 W. 542.

Promise in consideration of the execution of promissory note is not within the statute, McGraw v. Franklin 2 W. 17.

Agreement to pay on condition that creditor will forbear is not enforceable, though promisor is of opinion his own interests will be subserved, McKenzie v. Puget Sound Natl. Bank 9 W. 422.

Agreement of promisor to accept orders is not within statute, Kelley v. Greenough 9 W. 659.

Promise by debtor to pay to third party to get additional credit is not within statute Nordby v. Winsor 24 W. 535.

If debt of another is the consideration it is not within the statute—evidence, Dimmick v. Collins 24 W. 78.

As part consideration in the purchase of logs buyer agreed to pay seller's debt to third party, held not within the statute, Don Yook v. Washington Mill Co. 16 W. 459.

Promise to answer for debt of another if executed may be shown by parol, Dudley v. Duval 29 W. 528.

Novation is not within statute, Silsby v. Frost 3 W. T. 388.

Cited 80 W. 119.



of contract may be made, Sedro Veneer Co. v. Kwapil, 62 W. 385.

Preparation to sell goods may satisfy statute, Federal Iron etc. Bed Co. v. Hock 42 W. 668.

Memorandum containing details of sale of coffee held sufficient, Ankeny v. Young Bros. 52 W. 235.

Sale of building ordered by tenant in possession to landlord is valid and satisfies the statute, Reinhart v. Gregg 8 W. 191.

Sale of articles of special manufacture is not within statute, Fox v. Utter 6 W. 299.

Manufacture of special article to order is not within statute, though the elements are

purchased, Puget Sound Mach. Depot v. Rigby 13 W. 264.

If sale pleaded matters in avoidance of statute need not be pleaded, Shelton v. Conant 10 W. 193.

Contract for timber to be paid for at a rate on product manufactured therefrom is not contract of sale, Puget Sound Iron Co. v. Worthington 2 W. T. 472.

Purchaser's name must appear in memorandum—agent signing, Kahlotus Grain & Supply Co. v. Blair 101 W. 645.

Informal memorandum containing abbreviations explained by parol and valid, Nut House v. Pacific Oil Mills 102 W. 114.

**§7747. Record of Sale or Possession Required.** §2327.—4. No bill of sale for the transfer of personal property, shall be valid as against existing creditors, or innocent purchasers, where the property is left in the possession of the vendor, unless the said bill of sale be recorded in the auditor's office of the county in which the property is situated, within ten days after such sale shall be made.

Assignee of conditional sale failing to record cannot enforce conditions against vendee who paid purchase price to vendor. Barbour v. Hodge 99 W. 578.

Bill not recorded in 10 days inferior to subsequent chattel mortgage, Bonneviere v. Cole 90 W. 526.

No record, vendee notified bailee of purchase, held not change of possession, Churchill v. Miller 90 W. 694.

Cited in setting aside conveyance in bankruptcy, Benner v. Scandinavian-Am.

Bank, 73 W.

Has no application if no debts at time of sale, Greenwood v. Corbin 48 W. 357.

Recording of conditional sales, §9767.

Bill may be recorded at any time but parties intervening between its execution and the recording have priority Sayward v. Nunan 6 W. 87.

After sale consummated a re-sale of part of goods to original owner must conform to the statute as an original transaction, Whitney Mfg. Co. v. Gephart 6 W. 615.

**AN ACT** to regulate the purchase, sale, transfer and encumbrance of stocks of goods, wares or merchandise in bulk, and prescribing penalties for the violation thereof. Approved March 16, 1901. Laws '01 p 222.

**§7748. Vendee Shall Require Affidavit of Vendor.** §1. It shall be the duty of every person who shall bargain for, or purchase any stock of goods, wares or merchandise in bulk, for cash, or on credit, before paying to the vendor, or his agent, or representative, or delivering to the vendor, or his agent, any part of the purchase price thereof, or any promissory note, or other evidence therefor, to demand of and receive from such vendor, or agent, or if the vendor or agent be a corporation, then from the president, vice-president, secretary or managing agent of such corporation, a written statement, sworn to substantially as hereinafter provided, of the names and addresses of all the creditors of said vendor, to whom said vendor may be indebted, together with the amount of the indebtedness due or owing, and to become due or owing, by said vendor to each of such creditors; and it shall be the duty of said vendor, or agent, to furnish such statement, which shall be verified by an oath to the following effect:

State of Washington, County of \_\_\_\_\_ ss.

Before me personally appeared ..... (vendor, or agent, as the case may be), who being by me first duly sworn upon his oath doth depose and say, that the foregoing statement contains the names of all the creditors of ..... (the name of the vendor) together with their addresses, and that the amount set opposite each of said respective names is the amount now due and owing, and which shall become due and owing by ..... (vendor) to such creditors, and that there are no creditors holding claims due, or which shall become due for or on account of goods, wares or merchandise purchased upon credit or on account of money borrowed to carry on the business of which said goods are a part, other than as set forth in said statement. That all of the facts set forth in said statement, and in this affidavit, are within the personal knowledge of affiant.

Subscribed and sworn to before me this ..... day of ....., 190..

(Title of officer taking oath.)

Transfer in good faith for shares of stock of corporation held not within statute, *Maskeil v. Spokane, etc. Co.* 100 W. 16.

Affidavit showed creditors but goods to be returned, held vendee had insurable interest since creditors may demand cash, *Osborne v. Phoenix Ins. Co.* 90 W. 387.

False affidavit by vendor protects vendee and does not defeat the sale—bankruptcy act, *Friend v. Rosenfeld-Rovig Co.* 87 W. 329.

Sale valid between parties though no affidavit—bona fide purchaser takes title—creditor's remedy—assignee for benefit of creditors is not a "purchaser"—creditors take notice, *Kasper v. Spokane Merchants Ass'n* 87 W. 447.

Creditor taking stock for less than amount due is a preference and not sale, affidavit not necessary—garnishment denied, *Globe Electric Co. v. Montgomery* 85 W. 452.

Divorced female under 18 subject to act,—restaurant where liquors sold within act, *In re Lundy* 82 W. 148.

Failure to take affidavit cured by applying proceeds to claims of creditors—creditors cannot complain—purchaser cannot be held to have assumed debts, *Continental Distributing Co. v. Swanson* 79 W. 128.

Transfer of stock of goods to creditor is not within the statute, *Daniels v. Pacific Brg. & Mltg. Co.* 86 W. 416.

Vendor under conditional sales contract protected by act, *Stewart & Holmes Drug Co. v. Reed* 74 W. 401.

Trustee in bankruptcy brought action under the statute, *Ewing v. Leszynsky & Co.* 236 Fed. 811.

There is no legal presumption act was not complied with in a sale of the good will, stock and business of a person, *Mooney v. Mooney Co.*, 71 W.

Creditors of seller of a business are entitled to a personal judgment against the purchaser failing to comply with the law, without pursuing the property, or showing that the purchaser still had sufficient of the property to satisfy the judgment, *Friedman v. Branner*, 72 W.

Bankrupt has no exemption in sales in bulk, *In re Conner* 146 Fed. 998.

**§7749. Vendor's Creditors Must Be Paid. §2.** Whenever any person shall bargain for, or purchase any stock of goods, wares or merchandise in bulk, for cash, or on credit, and shall pay any part of the purchase price, or execute or deliver to the vendor, thereof, or to his order, or to any person for his use, any promissory note, or other evidence of indebtedness for said purchase price, or any part thereof, without first having demanded and received from said vendor, or from his agent, the statement provided for in section 1 of this act and verified as there provided, and without paying, or seeing to it that the purchase money of the said property, is applied to the payment of the bona fide claim of the creditors of the vendor as shown upon such verified statement, share and share alike, such sale, or transfer shall be fraudulent and void.

**§7750. Vendor's False Affidavit Perjury. §3.** Any vendor of any stock of goods, wares or merchandise in bulk, or any person who is acting for, or on behalf of any vendor, who shall knowingly or willfully make or deliver, or cause to be made or delivered a statement as provided for in section 1 of this act which shall not include the names of all the creditors of such vendor with the correct amount due, and to become due to each of them, or which shall contain any false or untrue statement, shall be deemed guilty of perjury, and upon conviction thereof, shall be punished by imprisonment in the peniten-

Act does not apply to individual's creditors prior to co-partnership—creditor consenting to vendee cannot complain, *Whitehouse v. Nelson* 43 W. 174.

Creditors by inference not protected by statute—creditor may be preferred, *Peterson v. Doak* 43 W. 251.

Goods must be delivered to constitute creditor, *Hardwick v. Gettier* 43 W. 644.

Conveyance to trustee for creditors with composition agreement is not within statute, *McAvoy v. Jennings* 44 W. 79.

Goods sold to bankrupt held by seller's creditors, *In re Gaskill* 130 Fed. 235.

Remedy of creditors is by attachment or garnishment, *Rothschild Bros. v. Trewella* 36 W. 679.

Act does not apply to cash register in saloon—only to stock or supplies, *Albrecht v. Cudihee* 37 W. 206.

Act applies to all creditors, *Eklund v. Hopkins* 36 W. 179.

Act applies to boarding house and restaurant business, *Sloss v. Morgan* 36 W. 160.

If affidavit not demanded purchaser holds goods in trust for creditors and is liable in garnishment, *Kohn v. Fishback* 36 W. 69, *Holford v. Trewella* id. 654.

Vendee may renounce sale if vendor refuses to comply with law, *Seattle Brewing etc. Co. v. Donofrio* 34 W. 18.

Sale of part by auction and substantially all remainder in bulk is contrary to law—goods trust fund—purchaser's liability, *Fitzhenry v. Munter* 33 W. 629.

Act does not apply to sale of livery stock—horses and carriages *Everett Produce Co. v. Smith* 40 W. 566.

Creditor took substitute notes and was not diligent, held he could not claim benefit of statute, *First Nat. Bank v. Coles* 40 W. 528.

Purchaser not requiring affidavit and goods taken is not to be accounted a creditor, *Olwell v. Gordon & Co.* 40 W. 185.

This act is due process of law, is not class legislation and is not in restraint of trade, *McDaniels v. Connelly Shoe Co.* 30 W. 549.



tiary for not less than one nor more than five years, or shall be fined in any sum not exceeding one thousand dollars.

**§7751. Sales Regulated. §4.** Any sale or transfer of a stock of goods, wares or merchandise, or all or substantially all of the fixtures and equipment used in and about the business of the vendor, out of the usual or ordinary course of business or trade of the vendor, or whenever substantially the entire business or trade theretofore conducted by the vendor, shall be sold or conveyed or whenever an interest in or to the business or trade of the vendor is sold or conveyed, or attempted to be sold or conveyed, shall be deemed a sale and transfer in bulk in contemplation of this act: Provided, however, That if such vendor produces and delivers a written waiver of the provisions of this act from his creditors as shown by such verified statements then and in that case the provisions of this section shall not apply. R&B. §5299; L. '13, ch. 175.

**§7751a. Act Does Not Apply to Judicial Sales. §5.** Nothing in this act contained shall apply to, executors, administrators, receivers, or any public officer acting under judicial process.

**AN ACT relating to overcharges on prices, rates or tariffs which by law are required to be published, and providing for interest thereon. Approved March 15, 1907. Laws '07 p 407**

**§7752. Overcharges of Tariffs. §1.** Any corporation, partnership or individual who furnishes the public any goods, wares, merchandise, pledge, security, insurance or transportation of which the price, rate or tariff is by law required to be published, shall, when any price, rate or tariff is charged in excess of the existing and established price, rate or tariff, refund to the person, partnership or corporation so overcharged, or to the assignee of such claim, the amount of such overcharge, and on failure so to do, the claim for such overcharge shall bear interest at the rate of eight per cent. per annum until paid.

#### **EVIDENCE—OATHS AND AFFIRMATIONS.**

**AN ACT in relation to oaths and affirmations. Approved December 2, 1869. Laws '69 p 378.**

**§7753. Who May Take Testimony and Administer Oaths. §1.** That every court, judge, clerk of a court, justice of the peace or notary public, is authorized to take testimony in any action, suit or proceeding, and such other persons in particular cases, as authorized by law. Every such court or officer is authorized to administer oaths and affirmations generally, and every such other persons in such particular case as authorized.

**§7754. Form Generally. §2.** An oath may be administered as follows: The person who swears, holds up his hand, while the person administering the oath thus addresses him: "You do solemnly swear that the evidence you shall give in the issue (or matter) now pending between ——— and ——— shall be the truth, the whole truth, and nothing but the truth, so help you God." If the oath be administered to any other than a witness giving testimony the form may be changed to: "You do solemnly swear you will true answers make to such questions as you may be asked," etc.

**§7755. Form Most Obligatory to Be Adopted. §3.** Whenever the court or officer before which a person is offered as a witness, is satisfied that he has a peculiar mode of swearing, connected with or in addition to the usual form of administration, which, in witness's opinion, is more solemn or obligatory, the court or officer may, in its discretion, adopt that mode.

**§7756. Oath According to Ceremonies of Religion. §4.** When a person is sworn who believes in any other than the Christian religion, he may be sworn according to the peculiar ceremonies of his religion, if there be any such.

**§7757. Person May Affirm. §5.** Any person who has conscientious scruples against taking an oath, may make his solemn affirmation, by assenting, when addressed, in the following manner: "You do solemnly affirm that," etc., as in section two.

§7758. Affirmation Equivalent to Oath. §6. Whenever, an oath is required, an affirmation, as prescribed in the last section, is to be deemed equivalent thereto, and a false affirmation is to be deemed perjury equally with a false oath.

Crime of perjury, §9032.

## EVIDENCE—PARTIES, EXAMINATION OF.

Parties to action may testify §7722.

§7759. Parties to Action as Witnesses. §403.—403. A party to an action or proceeding may be examined as a witness, at the instance of the adverse party, or of one of several adverse parties, and for that purpose, may be compelled in the same manner, and subject to the same rules of examination as any other witness to testify at the trial, or he may be examined on a commission.

Right to introduce evidence, on cross examination, *Eyers v. Burbank Co.* 97 W. 220.

Production of books, etc., §7771.

The calling of the adverse party as a witness and his rebuttal expressly authorized, *Thomas v. Fox* 51 W. 250.

Discovery supplanted by these provisions and defendant may be compelled to answer, *Le May v. Baxter* 11 W. 649.

Answers of defendant may be put in evidence as admissions, *Denny v. Sayward*

10 W. 428; *Island County v. Rabcock* 20 W. 238; *Allend v. Spokane Falls & N. Ry. Co.* 21 W. 324.

Party answering can not put interrogatories in evidence, *Moore v. Palmer* 14 W. 134.

Practice applies to Federal courts, *Smith v. Northern Pacific Ry.* 110 Fed. Rep. 341.

Interrogatories grouped and answered, *Pearce v. Greek Boys Min. Co.* 48 W. 38.

§7760. Interrogatories Before Trial. §404.—404. Instead of the examination being had at the trial, as provided by the last section, the plaintiff, at the time of filing his complaint or afterwards, and the defendant at the time of filing his answer or afterwards, may file in the clerk's office interrogatories for the discovery of facts and documents material to the support or defense of the action, to be answered on oath by the adverse party.

Continuance and new trial refused if interrogatories could have obtained information, *Potts v. Potts* 81 W. 27.

Interrogatories refused when answers immaterial or knowledge in party making, *Brooke v. Boyd* 80 W. 213.

Interrogatory requiring confidential evi-

dence stricken, *Cully v. Northern Pac. Ry.* 35 W. 241.

Defendant may file interrogatories—plaintiffs stricken when all are covered by answer and defendant is witness at trial, *Du Clos v. Batcheller* 17 W. 389.

§7761. Interrogatories—Service and Answer—Private Corporation. §405. Such interrogatories shall be served in the manner provided by law for the service of summons, or by service upon the attorney of the party to be interrogated, and the answers thereto shall be served and filed within twenty days after such service unless for cause shown a further time be allowed by the court. A private corporation may be interrogated in the same manner as individuals, and it shall not be excused for a failure to answer any proper interrogatory unless it shall show that no one in its employ or connected with, or interested in it, can give the desired answer or information. L. '97 288.

Service of summons, §8438.

§7762. Interrogatories Not a Bar to Examination at Trial. §406. A party to an action or proceeding, having filed interrogatories to be answered by the adverse party, as prescribed by the last two sections, shall not thereby be precluded from examining such adverse party as a witness at the trial, nor from taking his deposition to be read at the trial. L. '91 33.

§7763. Party's Testimony May Be Rebutted. §407. The testimony of a party upon examination at the trial, or by deposition, or upon interrogatories filed, may be rebutted by adverse testimony. L. '91 33.

Answers may be put in evidence and are subject to contradiction, *Denny v. Sayward* 10 W. 422.

in evidence and may give evidence in rebuttal, *Sawdey v. Spokane Falls & N. Ry.* 30 W. 349.

Party may put answers of adverse party Cited, 75 W. 383.



**§7764. Party Refusing—Remedy—Contempt.** §408. If a party refuse to attend and testify at the trial, or to give his deposition, or to answer any interrogatories filed, his complaint, answer or reply may be stricken out, and judgment taken against him, and he may also, in the discretion of the court, be proceeded against as in other cases for a contempt: Provided, That the preceding sections shall not be construed so as to compel any person to answer any question where such answer may tend to criminate himself. L. '91 33. .

Section is "due process of law," failure of answer being construed an admission of facts—facts required held not material—documents not required—further answer—default, *Lawson v. Black Diamond Coal Mining Co.* 44 W. 26.

Judgment sustained for failure to bring up record. Interrogatories will be presumed to reach facts at issue, *Capps v. Frederick* 44 W. 38.

Answer stricken and time refused, held not error, *Fidelity National Bank v. Adams* 38 W. 75.

Answers not made in time nor explicit not fatal, *Knapp v. Order of Pendo* 36 W. 601.

Judgment may be given, *Livesley v. O'Brien* 6 W. 553; *Walte v. Wingate* 4 W. 324.

Grouping interrogatories with one answer covering all sufficient, *Pearce v. Greek B. M. Co.* 48 W. 38.

Pleadings must be stricken, after refusal to answer interrogatories, before judgment can be taken, *Haas v. Washington W. P. Co.* 93 W. 291.

**AN ACT** providing for a physical examination of plaintiffs in actions to recover damages for injuries to the person. Approved March 15, 1915. Laws '15 p 236.

**§7765. Physical Examination in Personal Injury Cases.** §1. On or before the trial of any action brought to recover damages for injury to the person, the court before whom such action is pending may from time to time, on application of any party therein, order and direct an examination of the person injured as to the injury complained of by a competent physician or physicians, surgeon or surgeons, in order to qualify the person or persons making such examination to testify in the said cause as to the nature, extent and probable duration of the injury complained of; and the court may in such order direct and determine the time and place of such examination: Provided, This section shall not be construed to prevent any other person or physician from being called and examined as a witness as heretofore. Cited, 94 W. 526.

## **EVIDENCE—PERPETUATING TESTIMONY.**

Depositions §7726.

**§7766. Procedure to Perpetuate Testimony.** §423 When any person shall be desirous to perpetuate the testimony of any witness, he shall make a statement in writing, setting forth briefly and substantially his title, claim, or interest in or to the subject concerning which he desires to perpetuate the evidence, and the names of all the persons interested or supposed to be interested therein, and also the name of the witness proposed to be examined, which statement shall be under oath, and filed in the superior court. If the subject of the proposed deposition relate to real property within this state, the statement shall be filed in the county where the lands, or any part thereof, lie; in other cases, in the county where the parties interested, or some of them, reside. Upon such statement, an application may be made to such court, or judge thereof, to allow the examination of such witness.

Testimony perpetuated if parties and issues the same, §7770. *Puget Sound Nat. Bank* 37 W. 76.

False chose in action evidenced by writing should be reached directly and not by perpetuation of testimony, *Ritterhoff v.* This act does not limit, §§7799, 7734. but makes them effective, *In re Bolster* 59 W. 655.

**§7766a. Notice—Notice by Publication.** §424.—424. The court or judge shall appoint a time and place for hearing such application, and shall order notice thereof and of the statement, to be served on all persons mentioned therein as adversely interested in the matter. The notice shall be served personally on all those living in the state at least twenty days before the time of hearing the application. Upon those who are not residents of the state, it shall be served by publication or otherwise, in the same manner as a notice is served upon a non-resident.

**§7767. Order Allowing Deposition.** §425. If upon hearing of the parties, or of the applicant alone, should no adverse party appear, the court or judge shall be satisfied that there is sufficient cause for taking the deposition, an order shall be made allowing the examination of the witness; and such court or judge may direct a commission to issue therefor, in like manner as a commission to take the testimony of witnesses in actions or proceedings pending in such court.

**§7768. Interrogatories.** §426.—426. The deposition of such witness, whether residing in this state or not, shall be taken upon written interrogatories filed by the applicant, and cross interrogatories filed by any party adversely interested, if he shall think fit, and it shall be taken and returned substantially in the same manner as if taken upon commission, to be used in any cause pending in the same court.

**§7769. Filing and Use of Deposition—Objections.** §427.—427. The deposition when returned shall be filed in the office of the clerk of the court by whom the commission was issued, and if a trial be had between the person at whose request the deposition was taken, and the person named in the statement, or any of them, or their successors in interest, upon proof of the death or insanity of the witness, or his inability to attend the trial by reason of age, sickness or settled infirmity, the deposition, or a certified copy thereof, may be used by either party, subject to all legal objections. But if the parties attend at the examination, no objections to the form of the interrogatory shall be made at the trial, unless the same were taken at the time of examination.

**AN ACT providing for the introduction of testimony given in a former trial, action or proceeding.** Approved February 23, 1905. Laws '05 p 50.

**§7770. Testimony.** §1. The testimony of any witness, deceased, or out of the State, or for any other sufficient cause unable to appear and testify, given in a former action or proceeding, or in a former trial of the same cause or proceeding when reported by a stenographer, or reduced to writing, and certified by the trial judge, upon three days' notice to the opposite party or parties, together with service of a copy of the testimony proposed to be used may be given in evidence in the trial of any civil action or proceeding, where it is between the same parties and relates to the same matter.

Deposition of deceased witness admitted, W. 134.

Scribner v. Palmer 90 W. 595.

Copy of testimony given at a former trial and certified for appeal, may be introduced on a subsequent trial without recertification, Knutson v. Moe Bros. 72 W. 290.

Later deposition former testimony cannot be used—diligence in procuring witness, Kennedy v. Canadian Pac. R. Co. 87

## **EVIDENCE—RECORDS, DOCUMENTS, ETC.**

Telegraph, certifications by §7792.

### **RECORDS, DOCUMENTS, BOOKS, ETC.**

**§7771. Notice to Party to Produce Books and Papers.** §428.—428. Any court or judge thereof, in which an action is pending, may, upon notice, order either party to give to the other within a specified time, an inspection and copy, or permission to take a copy of any book, document or paper in his possession, or under his control containing evidence relating to the merits of the action or defense therein. If compliance with the order be refused.



the court may exclude the book, document or paper from being given in evidence, or if wanted as evidence by the party applying, may direct the jury to presume it to be such as he alleges it to be, and the court may also punish the party refusing as for contempt. This section shall not be construed to prevent a party from compelling another to produce books, papers or documents where he is examined as a witness.

Motion for an order is "upon notice," Gates v. Herr 102 W. 131.

Demanding papers in open court of person charged with crime is error, State v. Jackson 83 W. 514.

New trial refused because remedy not invoked, Moore v. Saunders 88 W. 602.

Subpoena duces tecum, §7799.

Interrogatories prior to trial, §7759.

Privileged matter cannot be inspected—contempt—appeal, State ex rel. Seattle General Contract Co. v. Superior Court 56 W. 649.

Documents cannot be required with interrogatories under §7760—party may show documents immaterial, Lawson v. Black Diamond Coal M. Co. 44 W. 26.

Can production of documents be compelled, Cully v. Northern Pac. Ry. 35 W. 241.

Absence of revenue stamps will not exclude documents in State courts, Foster v. Pacific Clipper Line 30 W. 515.

Genuineness of answer to letter being in issue letter may be admitted in proof of genuineness, Smith v. Kennedy 1 W. T. 55.

**§7772. Notice of Papers to Be Put in Evidence.** §429.—429. If either party at any time before trial allow the other an inspection of any writing, material to the action, whether mentioned in the pleadings or not, and deliver to him a copy thereof, with notice that he intends to read the same in evidence on the trial of the cause, it may be so read without proof of its genuineness or execution, unless denied by affidavit before the commencement of the trial. If such denial be made, of any writing not mentioned in the pleadings the court may give time to either party to procure evidence, when necessary for the furtherance of justice.

Copies of letters admitted in divorce after demand for originals, Glenn v. Glenn 84 W. 215.

Inspection only dispenses with proof of genuineness, Beebe v. Redward 35 W. 615.

Failure to offer inspection does not pre-

**§7773. Certifications of Any Court Competent.** §430.—430. The records and proceedings of any court of the United States or any state or territory shall be admissible in evidence in all cases in this state when duly authenticated by the attestation of the clerk, prothonotary or other officer having charge of the records of such court, with the seal of such court annexed.

Certifications of former conviction under habitual criminal law, State v. Rowan 84 W. 158.

Certified copy introduced as an admission, Pearce v. Greek Boys Min. Co. 48 W. 38.

Loss of certified copy of foreign judgment will not admit parol proof unless original destroyed, Keutzler v. Keutzler 3

W. 166.

Certificate of judge to clerk's attestation is not necessary—record need not show judge signed judgment—seal necessary only to clerk's certificate, Richle v. Carpenter 2 W. 512.

Record of marriage certificate of another state must be certified, State v. Kniffen, 44 W. 485.

**§7774. Certifications of Ministerial Officers.** §431.—431. Whenever any deed, conveyance, bond, mortgage or other writing, shall have been recorded or filed in pursuance of law, copies of record of such deed, conveyance, bond or other writing, duly certified by the officer having the lawful custody thereof, with the seal of the office annexed, if there be such seal, if there be no such seal, then with the official certificate of such officer, shall be received in evidence to all intents and purposes as the originals themselves.

Record not a court record must be certified as provided by Pierce Fed. Code §7585, State v. Kniffen 44 W. 485.

Record certified only by custodian—abstract of title not by custodian inadmissible, Roberts v. Center 26 W. 435.

Record shows deed without acknowledgment, original admissible to cure defect,

Gardner v. Port Blakeley Mill Co. 8 W. 77 Skellinger v. Smith 1 W. T. 370.

Best evidence of city assessment roll is the roll itself but it should be properly authenticated, Seattle v. Parker 13 W. 450.

Bond of constable certified by county clerk is admissible. State v. Yourex 20 W. 611.

**§7775. Id.—United States Officers.** §16. Copies of all records and documents on record or on file in the offices of the various departments of the United States and of this state, when duly certified by the respective

officers having by law the custody thereof, under their respective seals, where such officers have official seals, shall be admitted in evidence in the courts of this state.

Certifications of General Land Office admissible, *Sayward v. Gardner* 5 W. 253.

date, *Sylvester v. State*, 46 W. 585.

Notification to surveyor general of intent to claim land settled upon establishes

Maps as evidence, *Portland & S. Ry. v. Ladd*, 47 W. 88; *id. v. Clarke County*, 48 W. 509.

**§7776. Id.—State and County.** §432.—432. Copies of all papers on file in the office of the surveyor-general of Oregon or Washington, registers and receivers of the various land offices in this state, secretary of state, state treasurer, state auditor, superintendent of common schools, county treasurer, county auditor, or any matter recorded in either of said offices duly certified by the respective officers, with the respective seals of office annexed, where such officers have an official seal, shall be admitted in evidence in all courts of the state.

Certification: of wills, §10053; county county treasurer, §7001.

auditors generally, §1650; corporate articles by county auditor, §4514; county surveyor, §1769; county commissioners, §1663; 104.

Register may make certifications in proof of records, *Ward v. Moorey* 1 W. T.

**§7777. Id.—Concerning Public Lands.** §433.—433. Any certificate of residence and cultivation of the public lands issued by the surveyor-general of Oregon or Washington, or by the register and receiver of either of the land offices therein, or any certificate, receipt or exemplification of the records of either of said offices issued to any settler upon, or purchaser of said lands, or in any way affecting the rights of parties to lands in said state, issued or given in pursuance of law, or as evidence of any matter recorded in either of said offices, or any copies of maps, plats or diagrams of land claims of every nature or kind or plats of the public surveys, certified by either of said officers, shall be admitted as evidence in all the courts of this state. In actions affecting real estate, such certificate shall be prima facie evidence that the title of the lands mentioned or described in such receipt is in the person or persons named therein.

**§7778. Seal Without Wax.** §434.—434. A seal of court or public office, when required to any writ, process or proceeding to authenticate a copy of any record or document, may be affixed by making an impression directly on the paper, which shall be as valid as if made upon a wafer or on wax.

**§7779. Printed Laws by Authority.** §435.—435. Printed copies of the statute laws of any state, territory or foreign government if purporting to have been published under the authority of the respective governments, or if commonly admitted and read as evidence in their courts, shall be admitted in all courts in this state, and on all other occasions as presumptive evidence of such laws.

Laws presumed same as this state—construction of laws of another is for the court

tinge 38 W. 376.

and evidence not admissible, *Clark v. El-*

Statutes of sister states should be pleaded, *Lowry v. Moore* 16 W. 476.

**Supplementary—AN ACT to provide for the restoration of court records and files which have been lost or destroyed by fire, or otherwise, and declaring an emergency.** Received by the Governor March 28, 1890, and became a law without approval. Laws '90 p 337.

**§7780. Records May Be Restored.** §1. Whenever a pleading, process, return, verdict, bill of exceptions, order, entry, stipulation or other act, file or proceeding in any action or proceeding pending in any court of this state shall have been lost or destroyed by fire or otherwise, or is withheld by any person, such court may, upon the application of any party to such action or proceeding, order a copy or substantial copy thereof to be substituted.

Restoration of lost will, §10046.

Transcribing mutilated records, §1704.

Justice's records destroyed after appeal should be restored in Superior Court, *Mullen v. Mullen* 1 W. T. 193.

course of note not admissible in action by maker against payee for fraud, *Duffy v. Blake* 91 W. 140.

If instructions certified were not instructions of the court remedy is supplemental record, *State v. Schuman* 87 W. 590.

Evidence in action by holder in due



**§7781. Copies or Agreement to Substitute—Order.** §2. Whenever the record required by law of the proceedings, judgment or decree in any action or other proceeding of any court in this state, in which a final judgment has been rendered, or any part thereof is lost or destroyed by fire or otherwise such court may upon the application of any party interested therein, grant an order authorizing such record or part thereof to be supplied or replaced;

First, by a certified copy of such original record, or part thereof when the same can be obtained.

Second, by a duly certified copy of the record in the supreme court of such original record of any action or proceeding that may have been removed to the supreme court and remain recorded or filed in said supreme court.

Third, by the original pleadings, entries, papers and files in such action or proceeding when the same can be obtained.

Fourth, by an agreement in writing signed by all the parties to such action or proceeding, their representatives or attorneys, that a substituted copy of such original record is substantially correct.

Applies to justices' courts, *State ex rel Brockway v. Whitehead* 88 W. 549. Not necessary to show original signatures genuine, *Chrast v. O'Connor* 41 W. 360.

**§7782. Action to Restore—Effect of New Record.** §3. Whenever the record required by law or any part thereof, of the proceedings or judgment or decree in any action or other proceeding of any court in this state, in which the final judgment has been rendered, is lost or destroyed by fire or otherwise and such loss cannot be supplied or replaced as provided in section two of this act, any person or party interested therein may make a written application to the court to which said record belongs, setting forth the substance of the record so lost or destroyed, which application shall be verified in the manner provided for the verification of pleadings in a civil action, and thereupon summons shall issue and actual service or service by publication shall be made upon all persons interested in or affected by said original judgment or final entry in the manner provided by law for the commencement of civil actions, provided the parties may waive the issuing or service of summons and enter their appearance to such application; and upon the hearing of such application without further pleadings, if the court finds that such record has been lost or destroyed and that it is enabled by the evidence produced to find the substance or effect thereof material to the preservation of the rights of the parties thereto, it shall make an order allowing a record, which record shall recite the substance and effect of said lost or destroyed record or part thereof, and the same shall thereupon be recorded in said court, and shall have the same effect as the original record would have if the same had not been lost or destroyed, so far as it concerns the rights of the parties so making the application, or persons or parties so served with summons, or entering their appearance, or persons claiming under them by a title acquired subsequently to the filing of the application.

**§7783. Evidence Admissable on Trial.** §4. Upon the hearing of the application provided in section three the court may admit in evidence oral testimony and any complete or partial abstract of such record, docket entries or indexes, and any other written evidence of the contents or effect of such records and published reports concerning such actions or proceedings, when the court is of opinion that such abstracts, writings and publications were fairly and honestly made before the loss of such records occurred.

**§7784. Appeal Extended by Loss of Record.** §5. Whenever a lost or destroyed judgment or order is one to which either party has a right to a proceeding in error or of appeal, the time intervening between the filing of the application mentioned in section three, and the final order of the court thereon shall be excluded in computing the time within which such proceeding or appeal may be taken as provided by law.

**§7785. Costs.** §6. The costs to be taxed, upon an application to restore a lost or destroyed record, shall be the same as are provided for like service in civil actions and may be adjudged against either or any party to such proceeding or application or may in the discretion of the court be apportioned between such parties.

**§7786. Restoration of Probate Records.** §7. In case of the loss or destruction by fire or otherwise of the records or any part thereof, of any probate court or superior court having probate jurisdiction, the judge of any such court may proceed upon its own motion or upon application in writing of any party in interest to restore the records, papers and proceedings of either of said courts relating to the estates of deceased persons, including recorded wills, wills probated or filed for probate in such courts, all marriage records and all other records and proceedings, and for the purpose of restoring said records wills, papers or proceedings, or any part thereof, may cause citations or other process to be issued to any and all parties to be designated by him, and may compel the attendance in court of any and all witnesses whose testimony may be necessary to the establishment of any such record or part thereof, and the production of any and all written or documentary evidence which may be by him deemed necessary in determining the true import and effect of the original record, will, paper, or other document belonging to the files of said court; and may make such orders and decrees establishing such original record, will, paper, document or proceeding, or the substance thereof, as to him shall seem just and proper. The judge of the probate court may in vacation perform any of the duties imposed upon him by this section.

**§7787. Costs.** §8. The costs incurred in the probate and superior courts in proceedings under sections six and seven shall be paid by the party or parties interested in such proceedings or in whose behalf such proceedings are instituted.

### EVIDENCE—TELEGRAMS.

Supplementary—AN ACT for the regulation of the telegraph, and to secure secrecy and fidelity in the transmission of telegraphic messages. Approved December 7, 1881. C81 §§2342-62.

**§7788. Contracts by Telegraph Are in Writing.** §2352.—11. Contracts made by telegraph shall be deemed to be contracts in writing; and all communications sent by telegraph, and signed by the person or persons sending the same, or by his or their authority, shall be held and deemed to be communications in writing.

Offenses, §8982.

land for less than offer of telegram, Delgh.

Measure of damages in case of sale of ton v. Hover 58 W. 12.

**§7789. Notice by Telegraph.** §2353.—12. Whenever any notice information or intelligence, written, or otherwise is required to be given, the same may be given by telegraph: Provided, That the dispatch containing the same be delivered to the person entitled thereto, or to his agent or attorney. Notice by telegraph shall be deemed actual notice.

**§7790. Instruments Sent by Telegraph.** §2354.—13. Any power of attorney or other instrument in writing duly proved and acknowledged, and certified so as to be entitled to record, may, together with the certificate of its proof or acknowledgment, be sent by telegraph, and telegraphic copy of [or] duplicate thereof, shall prima facie, have the same force and effect, in all respects, and may be admitted to record and recorded in the same manner and with like effect as the original.

**§7791. Negotiable Instruments by Telegraph.** §2355.—14. Checks, due bills promissory notes, bills of exchange, and all orders or agreements for the payment or delivery of money, or other thing of value may be made or drawn by telegraph, and when so made or drawn, shall have the same force and effect to charge the maker, drawer, indorser or acceptor thereof, and shall create the same rights and equities in favor of the payee, drawer, indorsee, acceptor holder or bearer thereof, and shall be entitled to the same days of grace as if duly made, or drawn and delivered in writing; but it shall not be lawful for any person other than the person or drawer thereof to cause any such instrument to be sent by telegraph, so as to charge any person thereby except as hereinafter in the next section otherwise provided. Whenever the genuineness or execution of any such instrument be received by telegraph shall be denied on oath, by or on behalf of the



person sought to be charged thereby, it shall be incumbent upon the party claiming under or alleging the same, to prove the existence and execution of the original writing from which the telegraph copy or duplicate was transmitted. The original message shall in all cases be preserved in the telegraph office from which the same is sent.

**§7792. Certifications by Telegraph. §2356.—15.** Except as hereinbefore otherwise provided, any instrument in writing, duly certified under his hand and official seal, by a notary public, commissioner of deeds, or clerk of a court of record, to be genuine, within the person[al] knowledge of such officer, may together with such certificate, be sent by telegraph and the telegraphic copy thereof shall, prima facie only have the same force effect and validity, in all respects whatsoever as the original, and the burden of proof shall rest with the party denying the genuineness, or due execution, of the original.

**§7793. Criminal Warrants by Telegraph. §2357.—16.** Whenever any person or persons shall have been indicted or accused on oath of any public offense, or thereof convicted, and a warrant of arrest shall have been issued, by a magistrate issuing such warrant, or any judge of the supreme court, or of any superior court, may endorse thereon an order signed by him and authorizing the service thereof by telegraph, and thereupon such warrant and order may be sent by telegraph to any marshal, sheriff, constable or policeman, and on the receipt of the telegraphic copy thereof by any such officer, he shall have the same authority, and be under the same obligations to arrest, take into custody and detain the said person or persons, as if the said original warrant of arrest with the proper direction for the service thereof, duly endorsed thereon, had been placed in his hands, and the said telegraphic copy shall be entitled to full faith and credit and have the same force and effect in all courts and places as the original; but prior to indictment and conviction, no such order shall be made by any officer unless in his judgment there is probable cause to believe the said accused persons or persons, guilty of the offense charged: Provided, The making of such order by any officer aforesaid, shall be prima facie evidence of the regularity thereof, and of all proceedings prior thereto. The original warrant and order or a copy thereof, certified by the officer making the order shall be preserved in the telegraphic office, from which the same is sent, and in telegraphing the same, the original or the said certified copy may be used.

**§7794. Civil Writs by Telegraph. §2358.—17.** Any writ or order in any civil suit, or proceeding, and all the papers requiring service, may be transmitted by telegraph for service in any place, and the telegraphic copy of such writ, or order or paper so transmitted, may be served or executed by the officer or person to whom it is sent for that purpose, and returned by him if any return be requisite, in the same manner, and with the same force and effect, in all respects, as the original thereof might be, if delivered to him, and the officer or person serving or executing the same, shall have the same authority and be subject to the same liabilities as if the said copy were the original. The original, when a writ of order, shall also be filed in the court, from which it was issued and a certified copy thereof shall be preserved in the telegraph office from which it was sent; in sending it, either the original or certified copy may be used by the operator for that purpose.

**§7795. How Seal and Revenue Stamp Designated. §2359.—18.** Whenever any document to be sent by telegraph bears a seal, either private or official, it shall not be necessary for the operator in sending the same, to telegraph a description of the seal, or any words or device thereon, but the same may be expressed in the telegraphic copy by the letters "L. S.," or by the word "seal," and whenever any document bears a revenue stamp, it shall be sufficient to express the same in the telegraphic copy, by the word "stamp," without any other or further description thereof.

**§7796. How Messages to Be Dispatched.** §2361.—20. It shall be the duty of any telegraph company doing business in the state, to transmit all dispatches in the order in which they are received, under the penalty of one hundred dollars, to be recovered with costs of suit, by the person or persons whose dispatch is postponed out of its order: Provided, That communications to and from public officers, on official business, may have precedence over all other communications: And provided also, That intelligence of general and public interest may be transmitted for publication out of its order.

**§7797. "Telegraph Copy" and "Telegraphic Duplicate" Defined.** §2362.—21. The term "telegraphic copy" or "telegraph duplicate" whenever used in this act shall be construed to mean, any copy of a message made or prepared for delivery at the office to which said message may have been sent by telegraph.

## EVIDENCE—WITNESSES.

Telegraph, witnesses subpoenaed by §7794.

**§7798. Attendance if Within Twenty Miles or County—Justices.** §393. No person shall be obliged to attend as a witness before any court of record, judge, justice of the peace, commissioner, referee, or other officer, in any civil action or proceeding out of the county in which he resides, unless his residence be within twenty miles of such court, judge, justice of the peace, commissioner, referee, or other officer; and no person shall be obliged to attend as a witness in any civil action or proceeding in a justice's court, unless his residence be within twenty miles of such court, whether within the county or not. Nor shall any person be compelled to attend as a witness in any civil action or proceeding, unless the fees be paid or tendered to him, which are allowed by law, for one day's attendance as a witness and for traveling to and returning from the place where he is required to attend, Provided, Such fees be demanded by him at the time of service of the subpoena. L. '91 33.

Witness 20 miles away in another county not in contempt for failing to appear, State v. Court, 67 W. 370.

Witness from another county can not be held in contempt until it is shown he is within twenty miles, State ex rel. Timm v. Trounce 5 W. 804.

Production of books, etc., by the parties

to the action, §7771.

It is proper to instruct jury evidence is what it is claimed to be on refusal of other party to produce it, Thomas v. Fos 51 W. 250.

This section not limited by other sections not as broad—books of corporation not trade secrets, In re Bolster 59 W. 655.

**§7799. Subpoena Duces Tecum.** §394.—394. The subpoena may require not only the personal attendance of the person to whom it is directed, at a particular time and place, to testify as a witness, but may also require him to bring with him any books, documents or things under his control; but no public officer or person having the possession or control of public records or papers, which by law are required to be kept in any particular office or place, shall be compelled to produce the same in any court.

Contempt proceedings for failure to produce books must show power to comply, State v. Allen, 14 W. 684.

Failure to produce documents gives presumption that they are what adverse party claims them to be, Thomas v. Fos, 51 W. 250.

**§7800. Issuance of Subpoena.** §395. The subpoena shall be issued as follows:

I. To require attendance before a court of record or at the trial of an issue therein, such subpoena may be issued in the name of the State of Washington and be under the seal of the court before which the attendance is required or in which the issue is pending, Provided That such subpoena may be issued with like effect by the attorney of record of the party to the action in whose behalf the witness is required to appear and the form of such subpoena in each case may be the same as when issued by the court except that it shall only be subscribed by the signature of such attorney.



2. To require attendance out of such court before a judge, justice of the peace, commissioner, referee or other officer authorized to administer oaths or to take testimony in any matter under the laws of this state, it shall be issued by such judge, justice of the peace, commissioner, referee or other officer before whom the attendance is required.

3. To require attendance before a commissioner appointed to take testimony by a court of any other state, territory or county it may be issued by any judge or justice of the peace in places within their respective jurisdiction. L. '95 189.

**§7801. Service and Proof of Service.** §396.—396. Such subpoena may be served by any suitable person over eighteen years of age, by exhibiting and reading it to the witness, or by giving him a copy thereof, or by leaving such copy at the place of his abode. When service is made by any other person than an officer authorized to serve process, proof of service shall be made by affidavit.

Service on nonresident in this state cannot be enforced by mandamus, State ex rel. Hopkins v. Kennan 33 W. 247.

**§7802. Person in Court Required to Testify.** §397.—397. A person present in court, or before a judicial officer, may be required to testify in the same manner as if he were in attendance upon a subpoena issued by such court or officer.

**§7803. Damages for Failure to Attend as Witness.** §398.—398. If any person duly served with a subpoena and obliged to attend as a witness, shall fail to do so, without any reasonable excuse, he shall be liable to the aggrieved party for all damages occasioned by such failure, to be recovered in a civil action.

**§7804. Contempt for Failure to Attend—Fine.** §399.—399. Such failure to attend as required by the subpoena, shall also be considered a contempt, and upon due proof, the witness may be punished, by a fine not exceeding fifty dollars, and stand committed until said fine and costs are paid, or until discharged by due course of law.

**§7805. Attachment of the Person.** §400.—400. The court, judge, justice of the peace or other officer, in such case, may issue an attachment to bring such witness before them to answer for contempt, and also testify as witness in the cause in which he was subpoenaed.

**§7806. Arrest and Costs.** §400a. Such attachment may be directed to the sheriff or any constable of any county in which the witness may be found, and shall be executed in the same manner as a warrant; and the fees of the officer for issuing and serving the same shall be paid by the person against whom the same was issued, unless he shows reasonable cause, to the satisfaction of the justice, for his omission to attend; in which case the party requiring such attachment shall pay all such costs.

**§7807. Witness in Prison.** §401.—401. If the witness be a prisoner confined in a jail or prison within this state, an order for his examination in prison, upon deposition, or for his temporary removal and production before a court or officer, for the purpose of being orally examined, may be issued.

**§7808. Witness in Prison—Affidavit and Order.** §402.—402. Such order can only be made upon affidavit, showing the nature of the action or proceeding, the testimony expected from the witness, and its materiality.

### EXCEPTIONS.

Abstracts of record §7307; does not affect making of record §7308. Criminal cases §9346.

Transcripts on appeal—supplementary record §7305.

Substitute—AN ACT providing for and regulating the taking of exceptions, and the settling and certifying of bills of exceptions and statements of facts, and declaring the effect thereof. Approved March 8, 1893. General repeal. Laws '93 p 111.

**§7809. Exception Defined.** §1. An exception is a claim of error in a ruling or decision of a court, judge or other tribunal or officer exercising judicial functions, made in the course of an action or proceeding or after judgment therein.

Applies to criminal cases, §9346.

No exception necessary to misconduct of judge in criminal case, *State v. Jackson* 83 W. 514.

Exception available though party excepting prepares judgment according to ruling excepted to, *Eby v. Larkin*, 53 W. 454.

Exception to grant of new trial must show specific error, if order sustainable on any ground, or will not be disturbed, Col.

**§7810. When Necessary to Take.** §2. It shall not be necessary or proper to take or enter an exception to any ruling or decision mentioned in section one of this act, which is embodied in a written judgment, order or journal entry in the cause. But this section shall not apply to the report of a referee or commissioner, or to findings of fact or conclusions of law in a report or decision of a referee or commissioner or in a decision of a court or judge upon a cause or part of a cause, either legal or equitable, tried without a jury.

Findings mingled in decree need not be excepted to, *Moss v. Rubison* 102 W. 578.

No findings, motion for new trial not prerequisite to appeal, *Deaver v. Trahey* 98 W. 63.

Findings by court on evidence and special interrogatories to jury must be excepted to, *Yarborough v. Pellissier* 83 W. 49.

If transcript shows void order no statement necessary, *In re Waite Street* 89 W. 688.

Exception not required to memorandum decision of questions under advisement, *Gould v. McCormick* 75 W. 61.

When defendant obtains judgment findings on both plaintiff and defendant's pleadings and failure to take exceptions, plaintiff cannot claim non-suit, *Union Central Life Ins. Co. v. Hawkins* 84 W. 605.

General exception to equity decree will review evidence, *Hagen v. Bolcom Mills* 74 W. 462.

Findings separate from decree must be excepted to, *Harbican v. Chamberlain* 82 W. 556.

No exception necessary to order denying motion for new trial, *Paich v. Northern Pac. R. Co.* 88 W. 163.

Statement stricken because no exception to findings, *Beeler v. Barr* 90 W. 258.

General exceptions to findings and conclusions are sufficient, *Peterson v. Parke*, 68 W. 482.

No exception to costs necessary, *Hamilton v. Witner* 50 W. 689.

Matters excepted to in conclusions becoming part of judgment will be reviewed, *Spencer v. Commercial Co.* 36 W. 374.

Not necessary to except to order denying right to file supplemental answer, *Burnett v. Ewing* 39 W. 45.

Whether findings and conclusions sustain judgment reviewable without exceptions to findings and conclusions, *Adams v. Washington Brick Etc. Co.* 38 W. 243.

Findings not excepted to are considered the facts in the case, *McKee v. Whitworth* 15 W. 536.

Exceptions not necessary when no evidence was taken or offered and findings followed complaint, *Payette v. Ferrier* 31 W. 43.

Where objection is made to the introduction of evidence, but no exception is made to the findings, such findings will not be reviewed on appeal, *Washington*

*vin v. Northern Pacific R. Co.* 42 W. 5.

Mandamus will lie to compel evidence before referee, though not reported to be incorporated, *State ex rel. Richardson v. Superior Court* 41 W. 439.

Misconduct of counsel cannot be urged on appeal unless trial court was asked to instruct jury concerning same and exception taken, *State v. Bailey* 31 W. 89.

*Brick Etc. Co. v. Adler* 12 W. 24.

Error may be predicated on pleadings though no exceptions are taken to findings and conclusions, *Hathaway v. McDonald* 27 W. 659.

Errors not assigned are not basis of appeal, *State v. Owens* 15 W. 468.

In personal injury case objection that complaint shows contributory negligence may be raised on appeal without exception, *O'Toole v. Faulkner* 29 W. 544.

Order entered on the journal striking part of complaint may be reviewed without exception, *Taylor v. Spokane Falls & N. Ry* 32 W. 450.

Where an action has been tried by a court without a jury exceptions must be made, *Rice v. Stevens* 9 W. 298.

No exceptions necessary unless findings sought to be reviewed, *Cathcart v. Bryant* 28 W. 31.

Failure to except to findings waives error, *Bignold v. Carr* 24 W. 413.

In case of invasion of constitutional right in criminal case as comment by the court on evidence no exception is necessary, *State v. Crotts* 22 W. 245.

Error by exception may be predicated on pleadings without exceptions to findings, *Arey v. Arey* 22 W. 261.

of law without exceptions to findings or statement of facts, *Brown v. Kern* 21 W.

Error may be predicated on conclusions 211.

Appeal may be predicated on error without motion for new trial and exception thereto, *Carter v. Seattle* 21 W. 585.

Exceptions and record must show grounds of granting new trial, *Bender v. Rinker* 21 W. 636.

Appellant cannot claim errors assigned by respondent, *Tacoma v. Tacoma L. & W. Co.* 16 W. 288.

Error may be predicated on decree alone where there are no findings, *Goetzinger v. Rosenfeld* 16 W. 392.

Findings not excepted to nor other findings presented they will not be reviewed, *Forrest v. Gilchrist* 14 W. 4.

Trial court will not take judicial notice of record of another cause between the same parties nor will Supreme Court consider such record certified up, *Plumley v. Simpson* 31 W. 147.

Exception to findings necessary to secure review of affidavits, *Carstens v. Leidigh Etc. Lumber Co.* 18 W. 450.



**§7811. Manner of Taking Exceptions. §3.** Exceptions to the report of a referee or commissioner, or to findings of fact or conclusions of law in a report or decision of a referee or commissioner or in a decision of a court or judge upon a cause or part of a cause, either legal or equitable, tried without a jury, may be taken by any party, either by stating to the judge, referee or commissioner, when the report or decision is signed, that such party excepts to the same, specifying the part or parts excepted to (whereupon the judge, referee or commissioner shall note the exceptions in the margin or at the foot of the report or decision); or by filing like written exceptions within five days after the filing of the report or decision, or, where the report or decision is signed subsequently to the hearing and in the absence of the party excepting, within five days after the service on such party of a copy of such report or decision or of written notice of the filing thereof.

Time runs from signing, *Rugger v. Hammond* 95 W. 85.

Motion for new trial does not extend time for exceptions—exceptions filed too late court will consider only exclusion of offered evidence and refusal to make proposed findings not contradictory to those made—findings and evidence must both be excepted to, *Kitsap County Bank v. United States F. & G. Co.* 90 W. 12.

No exceptions, demurrer to complaint and motion for non-suit heard on appeal on the whole record, *Meeker v. Waddle* 83 W. 628.

Exceptions to findings not necessary if appellant rests case upon them, *Katterhagen v. Meister* 75 W. 112.

Exceptions to findings must be filed in five days from actual notice, shown by motion for new trial, *Friar v. Caswell* 79 W. 470.

Exceptions must refer definitely to instructions, *Harris v. Bremerton* 85 W. 64.

Trial court may grant new trial for erroneous instructions not excepted to, *Moore v. Marsh* 59 W. 151.

Clerk's journal entry sufficient to show exception, *Gottstein v. Simmons* 59 W. 178.

Time of taking five days after notice of filing findings, etc., *Lindsay v. Scott* 56 W. 206.

Exception to order denying motion for new trial is not exception to finding of fact, *Fender v. McDonald* 54 W. 130.

Motion to set aside findings shows notice—exceptions after 5 days stricken, *Cornthwaite v. Barrington Transp. Co.* 55 W. 389.

Exceptions to findings made more than five days after filing but within five days after notice are good, *Mann v. Provident Life etc. Co.* 42 W. 581.

Findings signed in the presence of the party notice is presumed and the evidence will not be reviewed, *Reilley v. Anderson* 32 W. 58.

Evidence taken in contest before civil service commission and reviewed by superior court is sufficient bill of exceptions, *Corbett v. Civil Serv. Comm.* 33 W. 190.

Written exceptions to findings are good, though findings and judgment were O.K.'d, *Humphries v. Sorenson* 33 W. 563.

Objection improperly sustained is cured by allowing question repeated in different form, *State v. Patchen* 37 W. 24.

Exception must be taken to findings after alteration by the court, *Shaw v. Benesh* 37 W. 457.

General exception to all findings is not good unless all findings erroneous, *Lilly v. Eklund* 37 W. 532.

General assignment of error to order overruling demurrer to answer held sufficient, *Phelps v. Tacoma* 15 W. 366.

When some of the findings are correct a general exception is insufficient, *Hannegan v. Roth* 12 W. 65.

Failure to take proper exception is not ground for striking statement of facts on appeal, *id.*

General exception to findings is insufficient, *Cook v. Tibbals* 12 W. 207.

Exception to judgment of dismissal reciting that the allegations of the complaint had not been sustained is sufficient, *McAllister v. McAllister* 28 W. 613.

Exceptions are to be taken within five days after service or knowledge of the filing of decision, *Fisher v. Kirschberg* 17 W. 290.

Appellant must take notice of the action of the court and take exceptions, *Irwin v. Olympia Water Works* 12 W. 112.

Exception not taken within five days are insufficient, *National Bank of Commerce v. Seattle Pickle Etc. Works* 15 W. 126.

An exception to findings of fact by number is sufficient, *Young v. Borzone* 26 W. 4.

Exception to findings by number is sufficient and the use of the word "objection" instead of "exception" is immaterial—where exceptions were made and taken by a stenographer and were not noted on the decision nunc pro tunc order may be entered of their notation, *Ranahan v. Gibbons* 23 W. 255.

Findings made on one day and exceptions noted the day following are sufficient, *Burroughs v. Kinsley* 27 W. 694.

General exception to findings is ineffective, *Payette v. Willis* 23 W. 299, *Ballard v. Keane* 13 W. 201.

Allowance of motion to strike exception in absence of showing of fraud in its insertion is unwarranted, *Anderson v. N. P. Ry. Co.* 19 W. 340.

Decree may be presented and signed without notice, *Brooks v. James* 16 W. 336.

Exceptions taken to findings nearly a year after filing and three months after notice of appeal are ineffective, *Ballard v. First Nat. Bank* 13 W. 670.

If party gives written notice of filing of findings five day period for exceptions runs from such notice though other party present in court, *Davies v. Cheadle* 31 W. 168.

Statement in record that party was present cannot be contradicted by affidavit *Davies v. Cheadle* 31 W. 168.

General exception to conclusion of law sufficient to raise question whether judgment is authorized by facts not disputed, *Woodhurst v. Cramer* 29 W. 40.

Insufficiency of exceptions to findings because conclusions may be erroneous, will not entitle respondent to affirmance *Robins v. Paulson* 30 W. 459.

§7812. **Exceptions to Charge to Jury.** §4. Exceptions to a charge to a jury, or to a refusal to give as a part of such charge instructions requested in writing, may be taken by any party by stating to the court, after the jury shall have retired to consider of their verdict, and, if practicable, before the verdict has been returned, that such party excepts to the same, specifying, by numbers of paragraphs or otherwise the parts of the charge excepted to, and the requested instructions the refusal to give which is excepted to; whereupon the judge shall note the exceptions in the minutes of the trial, or cause the stenographer (if one is in attendance) so to note the same.

Exceptions to instructions any time before new trial, §8504.

Method of taking exceptions to instructions not changed by §8504 as amended, *Coffey v. Seattle Electric Co.* 59 W. 686.

One exception insufficient, *Carroll v. Washington W. P. Co.* 56 W. 467.

Reasons for exceptions need not be given, *Harkins v. Seattle Elec. Co.* 53 W. 184.

All instructions must be included to review any, *State v. Rourk* 44 W. 464.

Exceptions must be made to instructions, *Hawkins v. Casey* 38 W. 625.

Exception to "each and every" statement in instructions to jury is sufficient, *Maling v. Crumney* 5 W. 222.

A general exception to instructions regarding four distinct elements of damage is insufficient, *McDonald v. Great Northern Ry. Co.* 15 W. 244.

The grounds of objection to an instruction need not be stated in the exception, *Sexton v. School District* 9 W. 5.

Exception to instructions by number is sufficient, *Bell v. Washington Cedar Shingle Co.* 8 W. 27.

Exceptions to instructions must not cover valid parts, *Rush v. Spokane Falls & N. Ry.* 23 W. 501.

Instructions must be excepted to, *Reiner v. Crawford* 23 W. 669.

Exceptions to instructions must be made in criminal case, *State v. Anderson* 20 W. 193.

Other grounds of exception than those claimed cannot be made in Supreme Court, *Edmunds v. Black* 15 W. 73.

§7813. **Exceptions to Evidence.** §5. Exceptions to any ruling upon an objection to the admission of evidence, offered in the course of a trial or hearing, need not be formally taken, but the question put or other offer of evidence, together with the objection thereto and the ruling thereon, shall be entered by the court, judge, referee or commissioner (or by the stenographer if one is in attendance) in the minutes of the trial or hearing, and such entry shall import an exception by the party against whom the ruling was made.

Statement from official notes not required, *Mattocks v. Great Nor. R. Co.* 94 W. 44.

Exception not necessary where objection interposed and ruling made on offer of evidence, *Nelson v. Western Steam Nav. Co.* 52 W. 177.

Evidence in narrative form sufficient, *Delaski v. Northwestern Imp. Co.* 61 W. 255.

General objection to deposition and exhibit insufficient—objections must be specific and appear of record, *Kroenert v. Falk* 32 W. 180.

Grounds of exception to evidence or affidavits must be stated, *Washington Mill*

Respondent cannot urge error on instruction not excepted to and appeal taken, *Pepperall v. City Park Transit Co.* 15 W. 176.

If only erroneous instruction is certified up error will not be presumed cured by other instructions, *Payne v. Spokane St. Ry.* 15 W. 522.

If only State introduces evidence which conclusively shows defendant's guilt erroneous instructions will not reverse case, *State v. Witherow* 15 W. 562.

Different ground of error cannot be assigned in Supreme Court, *Sweeney v. Pacific Coast Elevator Co.* 14 W. 562.

If instruction requested is modified exception should be to modification, *State v. Robinson* 12 W. 491.

Oral instructions must be specifically excepted to, *Lichty v. Tannatt* 11 W. 37.

Exceptions taken after the close of the trial, held, too late, *State v. Vance* 29 W. 435.

Exceptions taken after verdict are too late, *Sterrett v. Northport M. & S. Co.* 30 W. 164.

Exception attributing language not used to court improperly taken, *Anderson v. Harper* 30 W. 378.

Exceptions dictated to stenographer by attorney at attorney's table while judge on bench good, *Ongaro v. Twohy*, 49 W. 93.

Error in instructions cannot be reviewed without bill of exceptions or statement of facts showing all instructions and exceptions, *State v. Rourk*, 44 W. 464.

*Co. v. Marks* 27 W. 170 and cases cited.

To secure review of motion for new trial because evidence not sufficient, evidence will be reviewed on exception only to order on new trial, *Shotwell v. Dodge* 8 W. 337.

Grounds of objection to evidence must be stated, *Coleman v. Montgomery* 19 W. 610.

Grounds of objection to evidence must be stated, *Bolster v. Stocks* 13 W. 460.

Findings must be excepted to specifically to predicate error on exceptions to evidence, *Schlotfeldt v. Bull* 18 W. 64; *Washington Liquor Co. v. Northwestern Live Stock Co.* 18 W. 71.

Findings must be excepted to as well as



the evidence to secure review in equity case, *Montesano v. Blair* 12 W. 188.

When not necessary to except to findings to secure review of exceptions to evidence, *Schlotfeldt v. Bull* 17 W. 6.

Exception to evidence once entered need not be repeated, *Anderson v. White* 18 W. 658.

Record must show all the evidence to secure review, *State v. Zettler* 15 W. 625.

Improper admission of evidence not excepted to is not error, *Price v. Scott* 13 W. 574.

Party cannot object to immaterial evidence in rebuttal of his own immaterial evidence, *Rawson v. Ellsworth* 13 W. 667.

If part of evidence objected to is competent exception will not avail, *Sherlock v. Pt. Townsend So. Ry.* 13 W. 23; *Yake v. Pugh* 13 W. 78.

Testimony elicited in part from adverse witness and not contradicted cannot be objected to by party eliciting it, *Tacoma Light & Water Co. v. Huson* 13 W. 124.

Refusal of court to allow defendant's counsel to verify witness' information in

murder case when witness answered "I guess" is error, *State v. Rutten* 13 W. 203.

When error in admitting evidence is not cured by instructions, *Kohne v. White* 12 W. 199.

General exception to findings will not secure a review of the evidence, *Schoonover v. Condon* 12 W. 475.

Admission of incompetent evidence in equity case is harmless if there is other evidence to sustain findings, *Benson v. Hart* 10 W. 301.

Admission of incompetent evidence in equity is not ground of reversal, *Hastings v. Anacortes Packing Co.* 29 W. 224.

General exceptions to findings is insufficient to review evidence, *Davies v. Cheadle* 31 W. 168.

Grounds of objection must be given, *Nunn v. Jordan* 31 W. 506.

Evidence once objected to covers all evidence subject to same objections, *De Wald v. Ingle* 31 W. 616.

Objection must be made at the time—objection withdrawn cannot be insisted on, *State v. Melvern* 32 W. 7.

**§7814. Exceptions Not Otherwise Provided For. §6.** Exceptions to any ruling or decision made in the course of a trial or hearing, or in the progress of a cause, except those to which it is provided in this act that no exception need be taken and those to which some other mode of exception is in this act prescribed, may be taken by any party by stating to the court, judge, referee or commissioner making the ruling or decision, when the same is made, that such party excepts to the same; whereupon such court, judge, referee or commissioner shall note the exception in the minutes of the trial, hearing or cause, or shall cause the stenographer (if one is in attendance) so to note the same.

**§7815. Errors Considered on Appeal. §7.** Alleged error in any order, ruling or decision to which it is provided in this act that no exception need be taken, or in any report, finding of fact, conclusion of law, charge, refusal to charge or other ruling or decision which shall have been excepted to by any party as prescribed in this act, shall be reviewed by the supreme court, upon an appeal taken by the party against whom any such ruling or decision was made, or in which he has joined, from any other appealable order or from the final judgment in the cause, where such error, if found to exist, would materially affect the correctness of the judgment or order appealed from; Provided, The ruling or decision, the alleged error in which is sought to be so reviewed, together with the exception thereto if any, was a matter of record in the cause in the first instance, or before the hearing of the appeal has been brought into the record in the manner prescribed in this act. And any such alleged error shall also be considered in the court wherein or by a judge whereof the same was committed, upon the hearing and decision of a motion for a new trial, a motion for judgment notwithstanding a verdict, or a motion to set aside a referee's report or decision, made by a party against whom the ruling or decision to be reviewed was made, whether the alleged erroneous ruling or decision is a part of the record or not, where the alleged error, if found to exist, would materially affect the decision of the motion. But no exception to any appealable order, or to any final judgment, shall be necessary or proper in order to secure a review of such order or judgment upon direct appeal therefrom.

Without statement, proof, instructions and motion for new trial cannot be considered, *Weld v. Wheeler* 90 W. 178.

Statement that does not give testimony either by questions and answers or in narrative form will be stricken, *Morgan v. Chittenden Land Co.* 92 W. 364.

To secure review of the facts it must affirmatively appear that all the evidence is in the record, *International Development*

*Co. v. Sanger* 75 W. 546; *Agnes v. Powell* 79 W. 131.

All evidence not being included facts cannot be reviewed, *Pennsylvania Casualty Co. v. Stanton Co.* 82 W. 683.

Non obstante verdicto judgments, purposes, etc., *Forsyth v. Dow* 81 W. 137.

Manner of conducting trial, §8504.

In motion for new trial only the grounds submitted to trial court will be considered

on appeal, Tacoma Grocery Co. v. Barlow 12 W. 21.

Motion for new trial is not condition precedent to appeal in condemnation cases, Sultan W. & P. Co. v. Weyerhauser Timber Co. 31 W. 558.

No statement of facts necessary when only question is whether court ruled correctly on questions of law presented. Watson v. Sawyer, 12 W. 35; State v. McQuade, id. 554; Howard v. Shaw, 10 W. 151.

No bill of exceptions necessary where only error is dismissal of complaint, Long v. Billings, 7 W. 267; or nonsuit. Murray

**§7816. Errors Not Appearing of Record — Bill or Statement of.** §8. Any party to any action or proceeding may, at any stage thereof, have any rulings or decisions of the court, or a judge, referee or commissioner thereof, in the cause, together with the necessary evidence, papers or proceedings connected therewith or on which the same were based, and the exceptions thereto, if any, not already a part of the record in the cause, or so much of all or any thereof as is not already a part of the record, made a part of the record in the cause, by the certifying of a bill of exceptions as in this act provided. And any such party may, after the making of an appealable order or the final judgment in the cause, have all rulings, decisions, evidence, papers, proceedings and exceptions in the cause, or so much thereof as may be material to an appeal from such appealable order or from the final judgment, as the case may be, not already a part of the record, made a part of the record in the cause by the certifying of a statement of facts as in this act provided. The certifying of a bill of exceptions or statement of facts shall not prevent the subsequent certifying of other bills of exceptions or statements of facts, or both, comprising other matters in the cause, at the instance of the same or another party; but only one bill of exceptions or statement of facts can be settled or certified after the rendition of the final judgment in the cause.

Statement filed in time good regardless of time of service, Bisbee v. Lacky 97 W. 447.

Statement of facts required to review priority of claims in receivership, Crawford v. Seattle R. & S. R. Co. 97 W. 651.

Transcript certified at instance of respondent not necessary to appellant's case will be stricken, Lauridsen v. Lewis 47 W. 594.

Affidavits on motion to quash summons simply certified up without statement insufficient, McCart v. Racine Woolen Mills 48 W. 314; but see, Richardson v. Richardson 43 W. 634; Templeman v. Evans 35 W. 302.

Oral statement of instructions in supreme court good, Griffith v. Ridpath 38 W. 540.

Entire record necessary in attack on jurisdiction of county in road proceeding, Carlson v. County Com's, 38 W. 616.

Statement not necessary if only conclusions are to be reviewed, Seattle v. Smithers 37 W. 119.

In trial de novo the statement must contain even objections in depositions, Caughey v. Rien 37 W. 296.

Statement not necessary when only question is are conclusions warranted by findings, Fitzhenry v. Munter 33 W. 629.

Record in prior cause necessary in appeal from order staying action until costs in former action paid, Plumley v. Simpson 31 W. 147.

The Supreme Court will not review the evidence in a special proceeding unless a statement of facts is provided, Taylor v.

v. Shoudy, 13 W. 33.

In absence of showing on record presumption is that judgment was sustained by facts, Gay v. Havermale, 30 W. 622.

Where no exceptions taken judgment will be sustained if enough evidence to support it on any theory, Blumenthal v. Meat Co., 12 W. 331; see McPherson v. Smith, 14 W. 226; Wash. Mfg. Co. v. Adler, 12 W. 24; Pepperal v. Transit Co., 15 W. 176.

Bill of exceptions must be properly certified on appeal, Stinson v. Sachs, 8 W. 391.

City Council of Tacoma 15 W. 192.

Judgment in excess of verdict will not be reviewed without statement, Carpenter v. Barry 26 W. 255.

Findings and conclusions must be included in record with statement, State ex rel. Buddress v. Rhode 8 W. 362.

Where statement does not contain all the evidence objection to part of evidence will not be reviewed, Greeley v. Newcomb 21 W. 357.

Where bill is statement of facts occurring at hearing for new trial, rather than on the trial it will not be considered, Waite v. Stroud 9 W. 323.

Misconduct of judge must be shown in statement—leaving bench and going into jury room is misconduct, State v. Wroth 15 W. 621.

Stenographer's notes are not a part of the record, State ex rel. Miles v. Superior Court 13 W. 514.

Statement not necessary if question on findings, conclusions and decree, Watson v. Sawyer 12 W. 35.

Supreme Court will take judicial notice of former actions, Stallcup v. Tacoma 13 W. 141.

Judgment on pleadings and oral admissions in open court will not be disturbed when there is no statement of the oral admissions, Byers v. Rothchild 11 W. 296.

Appeal dismissed because there was no statement in cause where there were probably other grounds on which judgment could be sustained, Pierce v. Fawcett 31 W. 271.

Non-suit granted on opening statement of counsel such statement must be incor-



ported to secure review, *Johnson v. Spokane* 29 W. 730.

Statement may be agreed to if it does not contain all the record, *Nickens v. Lewis County* 23 W. 125.

Order as to continuance and instruc-

tions on evidence will not be reviewed in absence of statement, *State v. Johnny Tommy* 19 W. 270.

Record may be made on stipulation where facts stipulated, *Yakima Water Co. v. Hathaway* 18 W. 377.

**§7817. Bill to Be Filed and Served—Amendments—Bill to Be Settled and Certified.** §9. A party desiring to have a bill of exceptions or statement of facts certified must prepare the same as proposed by him, file, it in the cause, and serve a copy thereof on the adverse party, and shall also serve written notice of the filing thereof on any other party who has appeared in the cause. Within ten days after such service any other party may file, and serve on the proposing party, any amendments which he may propose to the bill or statement. Either party may then serve upon the other a written notice that he will apply to the judge of the court before whom the cause is pending or was tried, at a time and place specified, the time to be not less than three nor more than ten days after service of the notice, to settle and certify the bill or statement; and at such time and place, or at any other time or place specified in an adjournment made by order or stipulation, the judge shall settle and certify the bill or statement. If the judge is absent at the time named in a notice or fixed by adjournment, a new notice may be served. If no amendment shall be served within the time aforesaid, the proposed bill or statement shall be deemed agreed to, and shall be certified by the judge at the instance of either party, at any time, without notice to any other party, on proof being filed of its service and that no amendments have been proposed; and if amendments be proposed and excepted, the bill or statement, as so amended shall likewise be certified on proof being filed of its service and the service and acceptance of the amendments.

Party entitled to service may waive it, *In re Patterson* 98 W. 334.

Three days' notice sufficient, *Swanson v. Hood* 99 W. 506.

Judge cannot be compelled to certify uncontested statement as containing all the material facts, *State ex Snook v. Jury* 101 W. 1.

If statement incorrect mandamus is remedy, *Davies v. Rose-Marshall Coal Co.* 74 W. 565.

Bill of exceptions with only pleadings and instructions. bill of particulars is not proof to impeach instructions, *Nilsen v. Ebey Land Co.* 90 W. 295.

Record must show procedure, *Harris v. Bremerton* 85 W. 64.

Court may order stenographic notes to be produced, *State ex Griffith v. Court*, 71 W. 386.

Referred to another judge when trial judge and counsel cannot agree, *Heath v. Seattle Taxicab Co.*, 69 W. 69.

Filing of proposed statement of facts must precede service, *State ex rel, Palmer Mountain Co. v. Court*, 63 W. 442.

Failure to name place of settlement not fatal when amendments proposed—identity of judge, *Stelter v. Fowler*, 62 W. 345.

Court is without jurisdiction to settle statement on notice eight days after filing, *Costello v. Drainage District* 44 W. 344.

Any proposed statement should not be stricken but amended—mandamus, *State ex rel. Fowler v. Steiner* 51 W. 239.

Failure to settle statement of facts excused because of mandamus in case, *First Nat. Bank v. Fowler* 51 W. 638.

Certification without consideration of amendments, statement will be stricken, *Cushner v. Longbehn* 44 W. 546.

Bill cannot be withdrawn by party filing, for amendment, *State ex rel. Royal v. Linn* 35 W. 116.

Statement must be filed before service—must be filed in time, *State v. Yandell* 34 W. 409.

Bill should be settled before briefs filed, *Floding v. Denholm* 40 W. 463.

Notice of filing should be served on parties not served with copy, *Bennett v. Macabees* 40 W. 431.

Statement filed and served on same day presumed filed first, *Standard Furniture Co. v. Anderson* 38 W. 582.

Time for filing but not time for settlement limited—notice to settle, *Dodds v. Gregson* 35 W. 402.

Service of proposed statement of facts required only on parties that are adverse, *Howard v. Shaw et al.* 10 W. 153.

Notice to settle statement must specify the time and place, *Kroenert v. Gustason* 19 W. 373.

Bill of exceptions will be stricken on appeal when no notice of settlement has been given, *State v. Howard* 15 W. 425.

When a party makes no objection after notice to settle statement mandamus will not lie to compel judge to correct statement, *State ex rel. Hershner v. Arthur* 7 W. 358.

A statement once settled and certified cannot be altered, *Warburton v. Ralph* 9 W. 537.

Service of statement prior to filing is insufficient and the service of notice to settle statement is ineffective to give the court jurisdiction, *Erickson v. Erickson* 11 W. 76.

Party consenting to statement before ten days expires cannot correct statement, *State ex rel. Feterley v. Griffin* 32 W. 67.

Where no amendments or objections have been made statement may be certified without notice, *Maney v. Hart* 11 W. 67.

Failure to give notice of filing is ground for striking statement and affirmance of

judgment, but is not loss of jurisdiction, if there are other questions outside of statement, First Nat. Bank v. Andrews 11 W. 409.

Proposed statement of facts filed by the appellant and no amendments were filed such statement is conclusive on the parties on appeal, Powell v. Nolan 27 W. 318.

Service of proposed statement of facts upon a clerk is insufficient when the attorney himself is present, Times Printing Co. v. Seattle 25 W. 149.

Notice of settlement unnecessary where no substantial amendments proposed, Home Savings Etc. Co. v. Burton 20 W. 688.

Bill and amended bill both certified and sustained, Herrman v. Great Northern Ry. 27 W. 472.

Where record is silent service of copies will be presumed by Supreme Court, Chandler v. Shingle Co. 13 W. 89.

Judge may settle and certify statement in other county than where cause tried, State ex rel. Malouf v. McDonald 21 W. 201.

Bill may be settled when statement filed and notice to settle statement is given, Miller v. Vermurie 7 W. 386.

Where there is no notice of settlement and respondent does not appear statement will be stricken, Ward v. Tucker 7 W. 399.

Amendments settled after time will be stricken, In re Hill's Heirs 7 W. 421.

Affidavit showing last judgment is insufficient as record of judgment, Reichenbach v. Sage 8 W. 250.

If case heard on agreed statement no other statement necessary, Asher v. Se-kofsky 10 W. 379.

**§7818. How Papers Made Part of Record.** §10. Depositions and other written evidence on file shall be appropriately referred to in the proposed bill or statement, and when it is certified the same, or copies thereof if the judge so direct, shall be attached to the bill or statement, and shall thereupon become a part thereof.

Bulky exhibit referred to is properly included, Johnson v. Goodenough 103 W. 625.

Exhibits put in record only by statement, etc., Union Mach. & Supply Co. v. Stuchell 86 W. 249.

Exhibits lost, superior court will be directed to supply them, O'Donnell v. McCool 81 W. 452.

Reference to affidavits in statement not sufficient, they must be attached, Thurman v. Kildall 80 W. 283.

Papers excepted, §7823; depositions on appeal, §7740.

Affidavits omitted but certified separately sufficient, Templeman v. Evans 35 W. 302.

Judge's certificate showed record not complete and clerk's certificate held insufficient, Demaris v. Barker 33 W. 200.

Papers were not attached to proposed statement, the judge properly directed that they be attached, Thornley v. Andrews 40 W. 580.

Affidavit on motion for new trial must be put in bill, Rice Fisheries Co. v. Pacific Realty Co. 35 W. 535.

Affidavit filed after appeal taken stricken, Flood v. Libby 38 W. 366.

Failure to attach original county records not fatal, Gehres v. Wallace 38 W. 101.

Affidavits for continuance and after

Statement in equity case not served and without certificate of all the facts will be stricken, Case v. Ham 9 W. 54.

Statement containing additional matter incorporated after service sustained, United States Savings Etc. v. Jones 9 W. 434.

Statement is necessary if error is predicated on findings, Schlotfeldt v. Bull 22 W. 362.

Findings and conclusions are not necessary if error predicated on pleadings, Chase National Bank v. Hastings 20 W. 433.

If no amendments proposed notice of settlement unnecessary, Bruce v. Foley 18 W. 96.

If no amendments filed notice of settlement unnecessary, Hansen v. Nilson 17 W. 606.

Giving of notice before judgment is effective, Phillips v. Port Townsend Lodge No. 6 8 W. 529.

Service before filing is fatal, Barkley v. Barton 15 W. 33.

Where judge has continued but has not refused to settle statement mandamus will not lie, State ex rel. Miles v. Superior Court 13 W. 514.

Objection of service before filing should be made to trial court, it cannot be made by affidavit in Supreme Court, State ex rel. Abernethy v. Moss 13 W. 42.

Statement cannot be settled outside county—second notice may be given though first erroneous, Prospectors Development Co. v. Brook 31 W. 187.

Statement not settled and certified will be stricken and judgment affirmed, City of Sprague v. Meagher 32 W. 62.

judgment must be brought up, Soder v. Adams Hardware Co. 38 W. 607.

Copies of depositions and exhibits may be made part of record, O'Neill v. Ternee 32 W. 528.

Exhibits need not be attached until statement is certified, Douthitt v. McCulsky 11 W. 601.

Papers not introduced in evidence cannot be made a part of the record, Bartlett v. Seehorn 25 W. 261.

Affidavits in support of motion for new trial must be embodied in bill, Shuey v. Holmes 27 W. 489.

Affidavits to be used on appeal should be included in statement, Heffner v. County Com'rs 16 W. 273.

Affidavits must be made part of record, Armstrong v. Van De Vanter 21 W. 682.

Affidavit on motion for new trial in criminal case must be included to secure review, State v. Anderson 20 W. 193.

Affidavits must be included to secure their review, Norfor v. Busby 19 W. 450.

Papers and exhibits must be attached, State ex rel. Van Name v. Directors 14 W. 222.

Affidavit alleging facts occurring at trial, facts must be certified as having occurred, State v. McGonigle 14 W. 594.

Exhibits may be attached by the clerk, Pennsylvania Mtge. Co. v. Gilbert 18 W. 667.



Motion and affidavit were filed as one and order recited that court had read affidavit, held, not necessary to incorporate affidavit in bill or statement, *State v. Vance* 29 W. 435.

A written verified challenge to the panel of jurors need not be incorporated in the bill or statement, *id.*

Proceedings in the selection of jurors

**§7819. Contents of Certificate and Effect Thereof—Mandamus for Record.** §11. The judge shall certify that the matters and proceedings embodied in the bill or statement, as the case may be, are matters and proceedings occurring in the cause, and that the same are thereby made a part of the record therein; and, when such is the fact, he shall further certify that the same contains all the material facts, matters and proceedings theretofore occurring in the cause and not already a part of the record therein, or (as the case may be) such thereof as the parties have agreed to be all that are material therein. The certificate shall be signed by the judge, but need not be sealed; and thereupon all the matters and proceedings embodied in the bill of exceptions or statement of facts, as the case may be, shall become and thenceforth remain a part of the record in the cause, for all the purposes thereof and of any appeal therein. The judge may correct or supplement his certificate according to the fact, at any time before an appeal is heard. And if the judge refuse to settle or certify a bill of exceptions or statement of facts, or to correct or supplement his certificate thereto, in a proper case, he may be compelled so to do by a mandate issued out of the supreme court, either pending an appeal or prior thereto.

Statement certified as incomplete will be stricken, *Davidson v. King* 103 W. 379.

Certificate of "portion" of record will not secure review of facts, *Kahn v. Kahn* 103 W. 26.

Applied *Ingersoll v. Cudihee* 96 W. 515.

Certificate stating only plaintiff's evidence certified presumed incomplete, *Deller v. Long* 96 W. 372.

Judge cannot be compelled to certify that statement contains all the material facts unless such is the case, *State ex Snook v. Jurey* 101 W. 1.

Amended certificate of judge filed by stipulation, *Globe Electric Co. v. Montgomery* 85 W. 452.

Certificate of trial judge impeached by order of reference, *Globe Electric Co. v. Montgomery* 85 W. 452.

Mandate to supplement statement of facts discretionary, *State v. Engstrom* 86 W. 499.

Statement stricken because not complete and refusal to complete, *State v. Hankins* 93 W. 124.

Certificate failing to state "all the material facts" insufficient, *Taylor v. Andres* 83 W. 684.

Agreed statement must be certified by judge in proper form, *State v. Baxter* 78 W. 405.

Findings not reviewed because all material matters not certified up though parties had agreed, *State ex rel. Miller v. Seattle* 45 W. 691.

If no amendments offered judge may certify anywhere, *Downs Etc. Co. v. Pioneer Etc. Co.* 41 W. 372.

Where all evidence not sent up certificate must state that facts have been agreed on as material, *Kane v. Kane* 35

are part of the records of the superior court and may be certified by the clerk without being incorporated in bill or statement, *id.*

Affidavits must all be included and identified in appeal from order denying vacation of judgment, recital that court has examined them is insufficient, *Chevalier & Co. v. Wilson* 30 W. 227.

W. 517.

Supplemental statement may be supplied before hearing—mandate to compel, *State ex rel. Klein v. Superior Court* 36 W. 44.

Judge may amend certificate to show all material facts not in record, *In re Holburte's Estate* 38 W. 199.

Mandamus will lie to compel certificate to statement in appeal from order denying vacation of irregular judgment, *State ex rel. Hennesy v. Huston* 32 W. 154.

Absence of date or reference to record will not invalidate certificate, *O'Neill v. Ternes* 32 W. 528.

Judge cannot be compelled by mandamus to certify to an agreed statement of facts, *State ex rel. Smith v. Parker* 9 W. 653.

Parties cannot agree to a statement of facts that will supplant one certified by the judge, *State v. Maines* 26 W. 160.

Statement not certified may not be stricken, *Townsend Gas & E. Co. v. Hell* 24 W. 469.

Conclusiveness of certificate, *State v. Dunn* 22 W. 67.

"All the material facts" refers to facts on which error predicated and not to entire case, *Bruce v. Foley* 18 W. 96.

Certificate is immaterial if findings and conclusions show merits, *State ex rel. Orr v. Fawcett* 17 W. 188.

Statement will be taken as certified by the judge though amendments have been erroneously made, *Scott v. Brown* 13 W. 471.

Court can not be compelled by mandamus to certify statement of part of case tried more than ninety days before statement filed, *State ex rel. Dutch Miller Mining Etc. Co. v. Superior Court* 30 W. 43.

**§7820. Judge May Certify Though Term Has Expired—Death of Judge, Successor Shall Certify.** §12. If the judge before whom the cause was pending or tried shall from any cause have ceased to be such judge, he shall, notwithstanding, settle and certify, as the late judge, any bill of exceptions or statement of facts that it would be proper for him to settle and certify.

if he were still such judge, and such acts on his part shall have the same effect as if he were still in office; and he may be compelled by mandate so to do, as if still in office. If such judge shall die or remove from the state, while in office or afterwards, within the time within which a bill of exceptions or statement of facts, in a cause that was pending or tried before him, might be settled and certified under the provisions of this act, and before having certified such bill or statement, such bill or statement may be settled by stipulation of the parties, with the same effect as if duly settled and certified by such judge while still in office. But if the parties cannot agree, and if such judge, when removed from the state, does not attend within the state and settle and certify a bill of exceptions or statement of facts in case one has been duly proposed, his successor in office shall settle and certify such bill or statement, in the manner in this act provided, and in so doing he shall be guided, so far as practicable, by the minutes taken by his predecessor in office, or by the stenographer if one was in attendance on the court or judge, and may, in order to determine any disputed matter not sufficiently appearing upon such minutes, examine under oath the attorneys in the cause who were present at the trial or hearing, or any of them.

Judge disqualified after judgment proceedings properly part of record of second trial, *Seattle v. Puget Sound Tr., L. & P. Co.* 91 W. 567.

Successor of visiting judge may certify statement, *Grays Harbor Boom Co. v. Lonsdale* 54 W. 83.

The provisions of the above section authorizing judges whose terms have expired to settle statement is invalid as imposing judicial functions upon one not authorized, *Hallam v. Tillinghast* 19 W. 20.

Ex-judges can not be compelled by mandamus to certify a statement under Laws '93 page 6, which merely authorizes them

to do so, *State ex rel. Hinchey v. Allyn* 7 W. 285. Said act did not authorize judges to transfer the duty to their successors in office, *Michigan Mfg. Co. v. Saunders* 7 W. 302.

Judge elected after acting as judge pro tempore may certify statement, *Graton & Knight Mfg. Co. v. Redelsheimer* 28 W. 370.

Ex-judge certifying statement is cured by subsequent certification by judge of the court, *Anderson v. Provident Etc. Co.* 26 W. 192.

Statement certified by ex-judge and his successor will not be stricken, *Rauh v. Scholl* 19 W. 30.

**§7821. Time of Filing Bill—Extension of Time—Jurisdiction. §13.** A proposed bill of exceptions or statement of facts must be filed and served either before or within thirty days after the time begins to run within which an appeal may be taken from the final judgment in the cause, or (as the case may be) from an order with a view to an appeal from which the bill or statement is proposed: Provided, That the time herein prescribed may be enlarged either before or after its expiration, once or more, but not for more than sixty days additional in all, by stipulation of the parties or, for good cause shown and on such terms as may be just, by an order of the court or judge wherein or before whom the cause is pending or was tried, made on notice to the adverse party. And the certifying of a bill of exceptions or statement of facts, provided for by this act, and the filing and service of the proposed bill or statement, the notice of application for the settlement thereof, and all other steps and proceedings leading up to the making of the certificate, shall be deemed steps and proceedings in the cause itself, resting upon the jurisdiction originally acquired by the court in the cause, and no irregularity or failure to pursue the steps prescribed by this act, on the part of any party, or the judge shall affect the jurisdiction of the judge to settle or certify a proper bill of exceptions or statement of facts.

No jurisdiction after 90 days, *American Fuel Co. v. Benton* 98 W. 26.

Service prior to judgment good, *Bisbee v. Lacky* 97 W. 447.

Ex parte order extending time void—written notice required, *Siegley v. Nakata* 101 W. 73.

Statement filed after time stricken, *Howard v. Bussell Land Co.* 74 W. 331.

After judgment time begins to run from denial of new trial—abstract does not dispense with statement of facts, *Michaelson v. Overmeyer* 77 W. 110.

Time extended ex parte void—no attention necessary, *Michaelson v. Overmeyer* 77 W. 110; *Austin v. Petrovitsky* 82 W. 343.

Stenographer could not transcribe, held certiorari would lie to extend time, *State ex rel. Sefrit v. Superior Court* 74 W. 601.

Later act respecting abstracts does not change time of filing statement, *Codd v. Von Der Ahe* 92 W. 529.

Statement stricken where not filed within four months, *Williams v. Spokane*, 67 W. 368.

Notice of application for extension of time may be given same day, *Galler v. McMahon* 51 W. 473.

Statement not filed in time stricken, judgment affirmed, *Russell v. Mitchell* 61 W. 178.

Bill not served within 90 days stricken, *Brown v. Kinney* 48 W. 448.



Filing last day Sunday may be filed following day, *Delaski v. Northwestern Imp. Co.* 61 W. 255.

Not filed in time stricken in rape—judgment affirmed, *State v. Aschenbrenner* 45 W. 125.

Time for statement runs from entry of judgment, *Lindsay v. Scott* 56 W. 206.

Statement is in time within 30 days after time for appeal begins to run, *Mercer v. Lloyd Transfer Co.* 59 W. 560.

Time may be extended by stipulation without court's order, *Dodds v. Gregson* 35 W. 402.

Oral agreement extending time not effective—affidavits will not be considered, *Humes v. Hillman* 39 W. 107.

Refusal of extension of time cannot be cured and will not be reviewed, *Hotel Co. v. Merchants' etc. Co.* 41 W. 620.

Time begins to run from time motion for new trial is determined, *State ex rel. Payson v. Chapman* 35 W. 64.

Statement not filed in time will be stricken, *Jones v. Herrick* 33 W. 197.

Statement may be filed after thirty days if no amendments offered, though extension is granted after thirty days, *O'Neill v. Ternes* 32 W. 528.

Parties cannot stipulate for more than additional sixty days, *Thomas v. Lincoln County* 32 W. 317.

Doubt whether appeal will be made because of lack of funds will not excuse timely filing of statement, *Harpel v. Harpel* 31 W. 296.

If time of filing statement had been lost under the old law the court has not jurisdiction under the new law, *Oliver v. Lewis* 9 W. 572.

Appellant from a judgment must file statement within thirty days of notice of appeal regardless of the entry of judgment—time of settlement can not be extended

**§7822. After Certificate Bill to Be Returned to Appellant—Respondent Entitled to Bill.** §14. The copy of a proposed bill or statement which is served as in this act prescribed shall be returned to the party serving the same upon the bill or statement being certified, if he has appealed to the supreme court, or upon his thereafter appealing, for his use in preparing his brief on the appeal, and the time limited by any law or rule of court for the service and filing of his brief shall be enlarged, by any delay in returning such copy as herein required, to the extent of such delay; and when he serves his brief he shall return such copy to the party on whom it was originally served, and his brief shall not be deemed served till such copy is so returned by him.

Failure to return statement extends time for briefs, *Pacific Coast Coal Co. v. Esary* 85 W. 448.

**§7823| Certain Papers Need Not Be Incorporated.** §15. All reports of referees or commissioners, with the testimony and other evidence returned into court therewith, all findings of fact and conclusions of law made in writing by a judge, referee or commissioner and signed by him, all charges to a jury made wholly in writing, all instructions requested in writing to be given as part of a charge, all verdicts, general or special, and all rulings and decisions embodied in a written judgment, order or journal entry in the cause, together with all exceptions, if any, taken to any thereof, as well as all papers and matters hitherto deemed a part of the record, shall be deemed and are hereby declared to become, upon being filed in the cause or, as the case may be, embodied in a journal entry, a part of the record in the cause, for all the purposes thereof and of any appeal therein; and it shall not be necessary or proper, for any purpose, to embody the same in any bill of exceptions or statement of facts.

without notice or a sufficient excuse, *McQuesten v. Morrell* 12 W. 336.

Timely filing of statement of facts is jurisdictional—statement filed ninety-one days after final judgment will be stricken, *Loos v. Rondena* 10 W. 164; *Baker v. Washington Iron Works Co.* 11 W. 335.

Extension of time is discretionary—application for extension may be made to the judge who tried the case or before whom it is pending, *State ex rel. Bickford v. Benson* 21 W. 365.

Discretion of court in extending time will not be reviewed, *Greely v. Newcomb* 21 W. 357.

Time may be extended by any one of the several judges of the court, *Wallace v. Oceanic Packing Co.* 25 W. 143.

Statement must be filed in time, no amendment will be allowed, *State v. Seaton* 26 W. 305. The statement will be stricken, *Zindorf Const. Co. v. Western Am. Co.* 27 W. 31.

Statement filed after time without stipulation though on order of court without notice will be stricken, *Wallin v. Smith* 27 W. 349.

Statement not served within thirty days will be stricken, *State v. Landes* 26 W. 325.

File marks not necessary on copy, *Spokane Etc. Co. v. Loy* 21 W. 501.

Statement of facts on trial not filed in time can not be considered on appeal from order denying vacation of judgment, *Lamona v. Cowley* 31 W. 297.

Statement must be acted on by the court within ninety days—court has no power to extend time—after thirty days filing had only by order of court, *Crowley v. McDonough* 30 W. 57.

Failure to return statement will excuse timely filing of brief by appellant, *Jefferson County v. Trumbull* 31 W. 217.

Cited 80 W. 1.

Duplications in transcript affect only costs, Swanson v. Hood 99 W. 506.

Exhibits must be incorporated, Union Mach. & Supply Co. v. Stuchell 86 W. 249.

Instructions excepted to and exceptions allowed by the court need not be embodied in statement of facts, Perine Machinery Co. v. Buck 90 W. 344.

Instructions given wholly in writing, and filed, may be taken to supreme court over the certificate of the clerk, and need not be embodied in a bill of exceptions, Hof-

reiter v. Schwabland 72 W. 314.

How depositions and papers made part of statement, §7818.

Written instructions and requests need not be embodied in statement, State v. Phillips 59 W. 252.

Supreme Court will consider supplemental record, Curry v. Catlin 12 W. 322.

Affidavits purporting to have been used on a hearing must be made part of statement, Clay v. Selah Valley Irrigation Co. 14 W. 542.

Cited 75 W. 430.

**§7824. Statement Need Not Cover Cause Not Appealed From in Cases Consolidated.** §16. When two or more causes shall have been consolidated it shall not be necessary, for any purposes of an appeal which concerns only one or more, and not all, of the original causes, to embody in a bill of exceptions or statement of facts any fact, matter or proceeding that relates solely to an original cause with which the appeal is not concerned; and the bill or statement shall be certified as in this act prescribed, notwithstanding the omission therefrom of such facts, matters and proceedings.

Where cases consolidated, all parties must be served with notice of appeal, Cornell v. Hotel Co. 15 W. 433.

**§7825. Method Exclusive in All Cases Appealed to Supreme Court.** §17. This act shall apply to and govern all civil actions and proceedings, both legal and equitable, and all criminal causes, in the superior courts; but shall not apply to courts of justices of the peace or other inferior courts or tribunals from which an appeal does not lie directly to the supreme court.

Equity causes may be appealed on questions of law without a complete record, Howard v. Shaw et al 10 W. 151.

**§7826. Act Applies to Present Cases.** §18. This act shall govern proceedings had after it shall take effect, in actions then pending, as well as those in actions thereafter begun; but it shall not affect any right acquired or proceeding had prior to the time when it shall take effect, nor restore any right or enlarge any time then already lost or expired.

This act relates to the remedy and proceeding had after it took effect must be in accordance therewith, Wintermute v. Carner 8 W. 585. If right to settle statement of facts had been lost prior to taking effect of this act courts have no jurisdiction, Oliver v. Lewis 9 W. 572.

## EXECUTIONS.

All, issuance—contents—levy, etc. §7827.

Bill of lading issued writ will not lie §451.

Bonds by surety companies §§493, 3120, 4542.

Claim to property §7843.

Ejectment, etc., restitution of defendant recovering on new trial §7533.

Exemptions §7848.

Homesteads §7860.

Garnishment, executions on judgment in

§8013.

Mortgage foreclosure, executions, etc.

§8201.

Partition cases §8318.

Registered land how levied on §§5799, 5802.

Sales, etc. §7893.

Mortgage foreclosure, etc. §7903.

Sheriff's deeds confirmed (1891) §7920.

Stay §7921.

Supplementary proceedings §7927.

**Substitute—AN ACT to provide for and regulate the issuing of executions in this Territory.** Approved January 27, 1888. Laws '88 p 94.

**§7827. Execution May Issue Within Five Years.** §1. That the party in whose favor judgment has been given, or may hereafter be given or entered in any court of record in this state may have an execution issued at any time for the collection or enforcement of the same—providing that if a period of five years shall have elapsed without an execution being issued on such judgment then execution shall not issue thereafter until such judgment shall be revived in the manner provided for by law.

Creditor may levy execution on land fraudulently conveyed by husband to wife and make direct attack on deed, Crandall v. Lee 89 W. 115.

Superseded by section providing life of judgment six years, Catton v. Reehling 78 W. 187.

Sale after judgment paid is void, McLeish v. Ball 58 W. 690.

Defects in process, purchaser not bona fide purchaser, Hays v. Peavey 54 W. 78.

On transcript from another county void, Bramel v. Ratcliff 54 W. 581.

This section is modified by §§8111, 8121, and time runs on judgment of supreme court from its rendition, Whitworth v. McKee 32 W. 83.

Withholding order of sale in foreclosure of chattel mortgage for five months is not laches, Hamilton v. Carter 12 W. 510.

Execution levied before execution with instructions to not levy is prior, Wunsch



v. McGraw 4 W. 72.

Judgment will not support an execution without revival after five years, Hewitt

If judgment creditor has stipulated that money leived on shall abide another suit he can not have alias execution, Adams v.

v. Root 31 W. 312.

Nat. Bank of Commerce 30 W. 20.

**§7828. Execution to Any County in the State.** §2. That the party in whose favor judgment has been rendered, entered or given in any court of record in this state for the recovery of money or against the property of a judgment debtor may have execution issued thereon for the collection or enforcement of such judgment to the sheriff of any county in this state, provided that when a judgment requires the delivery of real or personal property execution shall be issued to the sheriff of the county where the property or some part thereof is situated.

**§7829. Enforcement of Executions.** §326.—326. When a judgment requires the payment of money, or the delivery of real or personal property, the same may be enforced in those respects by execution, as provided in this act. When it requires the performance of any other act a certified copy of the judgment may be served on the party against whom it is given or the person or officer who is required thereby, or by law, to obey the same, and a writ shall be issued commanding him to obey or enforce the same. If he refuses, he may be punished by the court as for a contempt.

Enforcement of injunction, §8061. Contempts generally, §7442.

**§7830. Four Kinds of Executions.** §327.—327. There shall be four kinds of execution; one against the property of the judgment debtor, another against his person the third for the delivery of the possession of real or personal property, or such delivery with damages for withholding the same, and the fourth commanding the enforcement of obedience to any special order of the court. And in all cases there shall be an order to collect the costs.

**§7831. Contents of Writ.** §328.—328. The writ of execution shall be issued in the name of the State of Washington, sealed with the seal of the court, and subscribed by the clerk, and shall be directed to the sheriff of the county in which the property is situated, or coroner, when the sheriff is a party, or interested, and intelligibly refer to the judgment, stating the court, the district or county where judgment was rendered, the names of the parties, the amount of the judgment, if it be for money, and the amount actually due thereon; and shall require substantially as follows:

1. If it be against the property of the judgment debtor it shall require the sheriff to satisfy the judgment, with interest, out of the personal property of the debtor, and if sufficient personal property cannot be found, out of his real property, upon which the judgment is a lien.

2. If it be against real or personal property in the hands of personal representatives, heirs, devisees, legatees, tenants of real property or trustees: it shall require the sheriff to satisfy the judgment, with interest, out of such property.

3. If it be against the person of the judgment debtor, it shall require the sheriff to arrest such debtor, and commit him to the jail of the county, until he shall pay the judgment, with interest, or be discharged according to law.

4. If it be for the delivery of the possession of real or personal property, it shall require the sheriff to deliver the possession of the same, particularly describing it, to the party entitled thereto, and may, at the same time, require the sheriff to satisfy any charges, damages, or rents and profits recovered by the same judgment, out of the personal property of the party against whom it was rendered, and the value of the property for which the judgment was recovered, shall be specified therein. If a delivery thereof cannot be had, and if sufficient personal property cannot be found, then out of his real property. When it is to enforce obedience to any special order, it shall particularly command what is required to be done, or to be omitted. When the nature of the case shall require it, the execution may embrace one or more of the requirements above mentioned. And in all cases, the execution shall require the collection of all interest costs, and increased costs thereon.

Land situated in two counties sale must be had of each parcel in county where sit-

uated, Vietzen v. Otis 46 W. 402.

Requirement of levy on personalty first is directory, Whitworth v. McKee 32 W. 83.

**§7832. Receipt and Return by Sheriff—Clerk's Duty to Pay Over Money.**

§330.—330. The sheriff shall indorse upon a writ or execution, the time when he received the same, and such execution shall be returnable within sixty days after its date, to the clerk who issued the same. And no sheriff shall retain any moneys, collected on execution, more than twenty days, before paying the same to the clerk of the court who issues the writ, under penalty of twenty per cent. on the amount collected, to be paid by the sheriff, the one-half to the party to whom the judgment is payable, and the other half to the county commissioners of the county wherein the action was brought, for the use of the school fund of said county. And the clerk shall, immediately after the receipt of any moneys collected on any judgment, notify the party to whom the same is payable, and pay over the amount to the said party on demand. On failure to so notify and pay over (without reasonable cause shown for delay), the clerk shall forfeit and pay the same penalty, to the same parties, as is above prescribed for the sheriff.

Writs must be levied in the order received — sheriff liable — measure of damages, *Continental Distributing Co. v. Hays* 86 W. 300. Superior Court 3 W. 702.

Where money is paid into court in a proceeding the court can not order the money paid to a judgment creditor not before the court, *State ex rel. Gordon v.*

Promise of sheriff to apply proceeds of an execution to the satisfaction of another judgment is illegal, *Hamilton v. Carter* 12 W. 510.

Default judgment on false return of summons by sheriff may be set aside, *Johnson v. Gregory*, 4 W. 109.

**§7833. Arrest of Defendant—Property Instead.** §331.—331. If the action be one in which the defendant may be arrested, as provided by law, an execution against the person of the judgment debtor may be issued to any county in the state: Provided, That the sheriff shall not arrest the defendant if he shall deliver to him the property subject to levy, sufficient to satisfy said judgment.

Habeas corpus to admit defendant to bail, *State ex rel. Syverson v. Foster* 84 W. 58.

Constitution prohibits imprisonment for debt, exceptions, Const., Art. 1, §17.

**§7834. Confinement of Defendant—Costs.** §332.—332. A person arrested on execution, shall be imprisoned within the jail or the liberties thereof, and kept at his own expense until satisfaction of the execution, or his legal discharge; but the plaintiff shall be liable to the sheriff in the first instance, for such expense as in other cases of arrest in the same manner, and to the same extent as therein prescribed.

**§7835. All Property Subject to Execution.** §333.—333. All property, real and personal, of the judgment debtor, not exempt by law, shall be liable to execution.

Exemptions. §7848.

Abstract books are subject to sale on execution, *Washington Bank etc. v. Fidelity Abstract etc. Co.* 15 W. 487.

Growing crops when tenant agreed to deliver one-third to landlord is not subject

to execution, *Tipton v. Martzell* 21 W. 273.

An option to purchase land is not such interest as can be levied on, *Provident Life & Tr. Co. v. Mills* 91 Fed. Rep. 435.

**§7836. Levy on Tenant in Common.** §751.—751. When a defendant in execution owns real estate subject to execution, jointly or in common with any other person, the judgment shall be a lien, and the execution be levied upon the interest of the defendant only.

**§7837. Levy on Co-Partner.** §752.—752. When he owns personal property jointly or in co-partnership with any other person, and the interest cannot be separately attached the sheriff shall take possession of the property, unless the other person having an interest therein, shall give the sheriff a sufficient bond, with surety, to hold and manage the property according to law; and the sheriff shall then proceed to sell the interest of the defendant in such property, describing such interest in his advertisement as nearly as may be, and the purchaser shall acquire all the interest of such defendant therein; but nothing herein contained shall be so construed as to deprive the co-partner of any such defendant of his interest in any such property.

Levy may be made if bond not given, *Graden v. Turner* 15 W. 136.

property officer liable for conversion, *Skavdale v. Moyer* 21 W. 10.

In levy on joint property as individual party will not bind partnership, id.



**Supplementary—AN ACT** subjecting the franchises to sale upon execution and upon order of sale under foreclosure of mortgage. Approved March 11, 1897. Laws '97 p 96.

**§7838. Corporate Franchises Subject to Execution.** §1. That all franchises of every kind and nature heretofore or hereafter granted shall be subject to sale upon execution, and upon order of sale issued upon foreclosure of mortgage, in the same manner as any other personal property may be sold upon execution or upon order of sale under foreclosure of mortgage except as hereinafter provided.

Involuntary sale of franchise not violation of Const., Art. 12, §8, State ex rel. Tacoma v. Sunset T. & T. Co. 86 W. 309. public or quasi-public authority and do not include "news contracts," Lawrence v. Times Printing Co. 22 W. 482.

"Franchises" are such as are granted by

**§7839. Levy by Filing With County Auditor—Notice to Debtor.** §2. The levy of such execution or order of sale shall be made by filing in the office of the auditor of the county in which the franchise was granted, a copy of the same, together with a notice in writing that under such execution or order of sale, the officer levying the same has levied upon the franchise to be sold, specifying the time and place of sale, the name of the owner of the franchise, the amount of the claim or judgment for the satisfaction of which the franchise is to be sold, and the name of the plaintiff in the action in which the decree of foreclosure or judgment is entered; and by serving a copy of such execution or order of sale and notice, upon the judgment debtor, or his attorney of record, if any, in the action in which judgment was rendered, twenty days prior to date of sale. Notice may be served upon a defendant in the same manner that summons is served in civil actions.

Service of summons, §8438.

**§7840. Place and Time of Sale.** §3. The sale of any franchise under execution or order of sale upon foreclosure must be made at the front door of the court house in the county in which the franchise was granted, not less than twenty days after the levy of the execution or order of sale and the giving of the notice as in this act provided.

**§7841. Assignee or Executor May Have Execution.** §334. In all cases in which a judgment has been recovered in any of the courts of this state, which shall have been assigned to any person, execution may issue in the name of the assignee, upon the assignment being recorded in the execution docket by the clerk of the court in which the judgment is recovered, and in all cases in which a judgment has been recovered in any such court, and the person in whose name execution might have issued, dies, execution may issue in the name of the executor, administrator or legal representative of such deceased person, upon the letters testamentary or of administration, or other sufficient proof being filed in said cause and minuted upon said execution docket by the clerk of the court in which said judgment is entered, and upon an order of said court or the judge thereof, which may be made on "an ex parte" application, and the provisions of this section shall extend to all judgments heretofore recovered, as well as to those hereafter to be recovered, and to, cases of persons now deceased as well as to those who may hereafter die. L. '86 75.

Recording assignment, §8120.

**§7842. Temporary Sheriff.** §745.—745. When there is no sheriff of a county or he is disqualified from any cause from discharging any particular duty, it shall be lawful for the officer or person commanding or desiring the charge [discharge] of that duty, to appoint some suitable person, a citizen of the county, to execute the same: Provided, That final process shall in no case be executed by any other person than the legally authorized officer; or in case he is disqualified, some suitable person appointed by the court, or judge thereof, out of which the process issues, who shall make such appointment in writing; and before such appointment shall take effect, the person so appointed shall give security to the party interested for the faithful performance of his duties, which bond of suretyship shall be in writing, be approved by the court or judge appointing him, and be placed on file with the papers in the case.

Temporary officer for criminal process, §9175.

All process to sheriff, §1807.

Service by private party of garnishment is good, Russell v. Millett 20 W. 212.

## EXECUTIONS—CLAIM TO PROPERTY.

§7843. **Affidavit and Bond in Claim—Delivery.** §350. When any other person than the judgment debtor shall claim property levied upon or attached, he may have the right to demand and receive the same from the sheriff or other officer making the attachment or levy, upon his making an affidavit that the property is his, or that he has a right to the immediate possession thereof, stating on oath the value thereof, and giving to the sheriff or officer a bond, with sureties in double the value of such property, conditioned that he will appear in the superior court of the county in which the property was seized within ten days after the bond is accepted by the sheriff or other officer, and make good his title to the same, or that he will return the property or pay its value to the said sheriff or other officer. L. '91 79.

Redelivery may be had in justice's court, Meakin v. Ludwig 99 W. 180.

Vendor in conditional sale claimed piano in levy in abatement of house of prostitution, Simon Piano Co. v. Fairfield 103 W. 206.

Bill of sale only prima facie evidence of title—facts may be shown, Lanham v. Longmire 100 W. 413.

Property released if no appraisal demanded, Shell v. Svennson 93 W. 40.

Discounted sight draft with bill of lading is superior to attachment, Commercial Bank v. Elliott 92 W. 357.

A sale of property between the levy of two writs the first being an attachment dissolved will convey title though the possession of the property remains in the hands of the sheriff, Anderson v. Land 5 W. 493.

On the trial the execution plaintiff can not interpose a counterclaim, Meyers v. Landrum 4 W. 762.

Claim to property is an independent action to be tried in the county where the property was seized, State ex rel. Peterson v. Superior Court 5 W. 639.

Affidavit shall be placed on the trial docket and with the claimant as plaintiff and the plaintiff in execution as defendant the cause shall be tried without answer, Chapin v. Bokee 4 W. 1.

Notwithstanding the remedy provided by this chapter sheriff may demand indemnifying bond, Carpenter v. Barry 26 W. 255.

The vendor of goods sold on credit may rescind the sale for fraud and claim the goods, the execution creditor is not in the position of a bona fide purchaser—sheriff only necessary party defendant, Scott v. McGraw 3 W. 675.

Sheriff holding with indemnity bond against rightful claim of third party holds for plaintiff, Barnett v. O'Loughlin 8 W. 260.

Value of property alleged in affidavit binds claimant, Peterson v. Woolery 9 W.

§7844. **Sureties Shall Justify or Sheriff Liable.** §351.—351. If the sheriff or other officer require it, the sureties shall justify as in other cases, and in case they do not so justify when required, the sheriff or officer shall retain the property; if the sheriff or officer do not require the bail to justify, he shall stand good for their sufficiency. He shall date and endorse his acceptance upon the bond.

Sureties to justify as in bail on arrest, §7366.

390.

Failure of sheriff to file affidavits and bond will not deprive court of jurisdiction to adjudicate title, State ex rel. Peterson v. Superior Court 6 W. 417.

Property claimed and bond given goods still in custodia legis, Eldson v. Woolery 10 W. 225.

Claimant may base his right upon the right of possession of the property as security, First National Bank v. Higgins 16 W. 45.

Separate property of the wife seized on execution against her husband it is not necessary for her to plead evidence of ownership, Freeburger v. Gazzam 5 W. 772.

Sureties on claim and delivery bond are not parties plaintiff and notice of appeal by plaintiff does not bind sureties, Carstens v. Gustin 18 W. 90.

The affidavit being all the pleading necessary it is not error to strike a complaint from the files—the proper judgment if claimant fails to make good his title is for the amount of the execution creditor's claim not exceeding the value of the property irrespective of any priority the claimant may have against the execution creditor, Sayward v. Nunan 6 W. 87.

Bill of sale of goods as security for a debt is not good title against an attachment against the person giving the bill of sale, Seibenbaum v. Delanty 4 W. 596.

Value of the property claimed is jurisdictional amount on appeal rather than the amount of the claim for which levy is made, Eldson v. Woolery 10 W. 225.

Requirement of ten days in making title good is not mandatory—property delivered to claimant objection that the affidavit has never been tied with the sheriff can not be made, Mayer v. Woolery 10 W. 354.

If claimant successful in case of property attached judgment is a bar to another against the sheriff the attaching creditor and the sureties, Dawson v. Baum 3 W. T. 464.

Cited 83 W. 77; 84 W. 419; 90 W. 694.



§7845. **Affidavit and Bond to Be Filed—Trial.** §352. The officer shall return the affidavit, bond and justification, if any, to the office of the clerk of the superior court, and the case shall stand for trial in said court. L '91 79

Execution plaintiff cannot, on trial of erty seized, State v. Sup. Ct., 5 W. 639.  
Issue of title, interpose counterclaim My- No pleadings necessary, but affidavit and  
ers v. Landrum, 4 W. 762. bond—parties, Chapin v. Bokee, 4 W. 1.

Must be tried in jurisdiction where prop-

§7846. **Parties to Action.** §353.—353. The person claiming the property shall be plaintiff and the sheriff and plaintiff in the execution defendants.

§7847. **Trial and Judgment—Costs.** §354.—354. If the claimant makes good his title to the property, the bond shall be canceled; if to a portion thereof a like proportion of the bond shall be canceled; but if he shall not maintain his title, judgment shall be rendered against him and his sureties for the value of the property, or for such less amount as shall not exceed the amount due on the original execution or attachment. When the judgment is in favor of the sheriff for the entire property, the claimant shall pay the costs; when the claimant recovers all the property, judgment shall be given in favor of the claimant for costs; when the claimant recovers a portion of the property only, the costs shall be apportioned. When the plaintiff prevails, the costs may be taxed against the defendant, who was plaintiff in the execution or attachment, or the court may, if it shall be of opinion that the sheriff attached or levied upon said property, without the exercise of due caution, adjudge him to pay the costs or any portion thereof.

Plaintiff alleging value judgment may should be in alternative—interest, Hill v. be entered for defendant for such value, Gardner 35 W. 529.  
though evidence showed less—judgment

## EXECUTIONS—EXEMPTIONS.

Wife's separate property §1424.

§7848. **Married Woman's Exemptions.** §341.—341. All real and personal estate belonging to any married woman at the time of her marriage, and all which she may have acquired subsequently to such marriage, or to which she shall hereafter become entitled in her own right, and all her personal earnings, and all the issues, rents and profits of such real estate, shall be exempt from attachment and execution upon any liability or judgment against the husband, so long as she or any minor heir of her body shall be living: Provided, That her separate property shall be liable for debts owing by her at the time of her marriage.

Constitution requires Legislature to provide, Const., art. 29, §1.

Priority of labor claims in levies, §9736.

Homesteads act '95, §7860.

Waiver of exemption generally, §7858.

Mortgage of homestead, §7860.

Where the earnings of a wife belonged to the community, property purchased therewith was not exempt from execution on a judgment against the community, Fisher v. Marsh, 69 W. 570.

The law of the forum controls, Clark v.

Eltinge 38 W. 376.

Money saved by wife from household expenses is not separate property—statement by husband that his wife had selected certain lots; that he intended the land as a home for her; is not a gift constituting a separate estate when such lands were purchased with community funds, Abbott v. Wetherby 6 W. 507.

Does not abrogate husband's interest but is exemption in favor of wife, Lemon v. Waterman 2 W. T. 485.

§7849. **Homestead to Householder.** §342.—342. There shall be also exempt from execution and attachment to every householder, being the head of a family, a homestead not exceeding in value the sum of one thousand dollars, while occupied as such by the owner thereof, or his or her family. Said homestead may consist of a house and lot or lots in any city, or of a farm, consisting of any number of acres, so that the value of the same shall not exceed the aforesaid sum of one thousand dollars. Such homestead may be selected at any time before sale.

Declaration must be filed before execution sale, State ex rel. Jakubowski v. Superior Court 84 W. 663.

Later act, §7860.

"Householder," §7853; head of family, §7864.

Possession during redemption, §7917.

Homestead is vested interest—selection—sale under execution, Whitworth v. McKee 32 W. 83.

The law requiring the word "homestead" to be entered on margin of record was re-

pealed by the Code of 1881, Philbrick v. Andrews 8 W. 7.

A sheriff's deed based on the sale of a homestead is void, Asher v. Sekofsky 10 W. 379.

Sale of homestead under execution is void, Asher v. Sekofsky 10 W. 379.

Homestead may be selected at any time before execution sale, Wiss v. Stewart 16 W. 376.

Right to claim homestead is not defeated by claimant making a deed which is in effect a mortgage, id; Ross v. Howard 25 W. 1.

A general judgment lien does not attach to a homestead, Traders Nat. Bank v. Shorr 20 W. 1.

Mere occupancy of a dwelling-house as a residence constitutes a selection and is notice to the world even if the property is the separate property of the husband and the selection is by the wife—selection may be made at any time before sale, Anderson v. Stadelmann 17 W. 433.

Mere occupancy is selection of homestead, In re Feas's Estate 30 W. 51; 8 W. 7.

After mortgagee has sought to sell homestead under deficiency execution he is es-

topped from claiming equitable lien thereon because homestead purchased with proceeds of waste of mortgaged premises, Harding v. Atlantic Trust Co. 26 W. 536.

Confirmation of sale is not adjudication of homestead claimed, Harding v. Atlantic Trust Co. 26 W. 536.

Homestead is exempt for debt before patent though it is not occupied and if sale is had land may be recovered, Jean v. Dee 5 W. 580.

Order of sale in supplementary proceedings and failure to claim does not defeat homestead, Field v. Greiner 11 W. 8.

Mortgage by husband of his separate property subject to homestead is void as to the wife, Anderson v. Stadelmann 17 W. 433.

A mechanic's lien may be claimed on a homestead, Parsons v. Pearson 9 W. 48.

Husband with general power of attorney may mortgage homestead, Oregon Mortgage Co. v. Hersner 14 W. 515.

In an action to set aside a transfer of realty and subject it to the lien of a judgment, homestead must be claimed and cannot be claimed in a subsequent action, Traders' Nat. Bank v. Schorr 20 W. 1.

**§7850. Proceeds of Sale of Homestead Is Exempt.** §346.—346. In case of the sale of said homestead, any subsequent homestead acquired by the proceeds thereof, shall also be exempt from attachment and execution, nor shall any judgment or other claim against the owner of such homestead, be a lien against the same in the hands of a bona fide purchaser for a valuable consideration.

Proceeds of sale exempt, §7879.

**§7851. Exemption of Personal Property Generally.** §347. The following property shall be exempt from execution and attachment except as hereinafter specially provided:

First—All wearing apparel of every person and family.

Second—All private libraries, not to exceed five hundred dollars (\$500) in value, and all family pictures and keepsakes.

Third—To each householder one bed and bedding, and one additional bed and bedding for each additional member of the family; and other household goods and utensils and furniture not exceeding five hundred dollars (\$500) coin in value. The other household goods and utensils and furniture specified above, shall on the demand of the officer having the execution or attachment in hand, be selected by the husband if present, if not present they shall be selected by his wife, and in case neither husband or wife nor other person entitled to the exemption by having the description of a householder shall be present to make the selection, then the sheriff shall make a selection of the household goods, utensils and furniture equal in value to said five hundred dollars (\$500) and shall return the same as exempt by inventory, and such selection by the sheriff or other person described above shall be prima facie evidence: First. That such household goods, utensils and furniture are exempt from execution and attachment. Secondly. That the value of the property so selected is not over five hundred dollars (\$500).

Fourthly—To each householder two cows with their calves, five swine, two stands of bees, thirty-six domestic fowls, and provisions and fuel for the comfortable maintenance of such householder and family for six months, also feed for such animals for six months: Provided, That in case such householder shall not possess or shall not desire to retain the animals named above, he may select from his property and retain other property, not to exceed two hundred and fifty dollars (\$250) coin in value. The selection in the proviso mentioned, shall be made in the manner, and by the person and at the time mentioned in subdivision 3, and said selection shall have the same effect as selections made under subdivision 2 of this section.



Fifthly—To a farmer one span of horses or mules with harness, or two yoke of oxen, with yokes and chains and one wagon; also farming utensils actually used about the farm, not exceeding in value five hundred (\$500) dollars in coin; also one hundred and fifty bushels of wheat one hundred and fifty bushels of oats or barley, fifty bushels of potatoes, ten bushels of corn, ten bushels of peas, and ten bushels of onions for seeding purposes.

Sixthly—To a mechanic, the tools and instruments used to carry on his trade for the support of himself and family, also material used in his trade not exceeding in value five hundred dollars in coin.

Seventhly—To a physician, his library, not to exceed in value five hundred dollars in coin; also one horse with harness and buggy, the instruments used in his practice, and medicines not exceeding in value two hundred dollars in coin.

Eighthly—To attorneys, clergymen, and other professional men, their libraries not exceeding one thousand dollars in coin value, also office furniture, fuel and stationery not exceeding in value two hundred dollars in coin.

Ninthly—All firearms kept for the use of any person or family.

Tenthly—To any person a canoe, skiff or small boat, with its oars, sails and rigging, not exceeding in value two hundred and fifty dollars.

Eleventhly—To a person engaged in lightering for his support or that of his family, one or more lighters, barges or scows, and a small boat with oars, sails and rigging not exceeding in the aggregate two hundred and fifty dollars in coin value.

Twelfthly—To a teamster or drayman engaged in that business for the support of himself or his family, his team, consisting of one span of horses or mules, or two yoke of oxen, or a horse and mule with harness, yokes, one wagon, truck, cart or dray.

Thirteenthly—To a person engaged in the business of logging, for his support or that of his family, three yoke of work cattle and their yokes; and axes, chains, implements for the business and camp equipments, not exceeding three hundred dollars coin in value.

Fourteenthly—A sufficient quantity of hay, grain or feed to keep the animals mentioned in the several subdivisions of this chapter, for six weeks. But no property shall be exempt from an execution issued upon a judgment for the price thereof, or any part of the price thereof, or for any tax levied thereon. Each person shall be entitled to select the property to which he is entitled under the several subdivisions of this act. L. '86 96.

Lieu selection of \$250 allowed overruling Creditors Coll. Assn. v. Bisbee 80 W. 358; Lemagie v. Acme Stamp Works 98 W. 34.

Wages prior to bankrupts exemption, In re Phillips 209 Fed. 490.

Merchandise from stock in trade may be selected in lieu of animate property, Hills v. Joseph 229 Fed. 865.

"Other furniture" means other than beds and bedding, In re Robison 215 Fed. 662.

Personal property other than money subject to lieu selection, In re Crook 219 Fed. 979.

Money exempt in lieu of specific property, In re Swanson 213 Fed. 353.

Lieu selection not allowed, In re Scheier 188 Fed. 744.

Bankrupt cannot have substituted exemption from partnership, Jennings v. Stanus 191 Fed. 347.

Logger not entitled to horses and harness, Kennedy v. Hills 233 Fed. 666.

Option of "other property" means property of like nature not money, Creditors' Collection Ass'n v. Bisbee 80 W. 358.

Bankrupt not entitled to substituted exemption under Subd. 4, Jennings v. Stanus & Son, 191 Fed. 347.

Other property may be selected in lieu of that provided in Subd. 4, In re Scheier 188 Fed. 744.

Exemption in supplementary proceedings, \$7951.

Section liberally construed—farmer intended to use team—leaving state to defraud creditors question of fact, State ex rel. McKee v. McNeill 58 W. 47.

Bankrupt entitled to exemption beside wages, In re Holden 127 Fed. 980.

Personalty worth more than \$1,000 held exempt, Whitworth v. McKee 32 W. 83.

A mechanic is entitled to exemption under sub. 6 although he is neither the head of a family nor a householder, Geiger v. Kobilka 26 W. 171.

"Householder" in sub. 4 means head of a family, Peterson v. Bingham 13 W. 178.

Laws '97 page 93 providing one thousand dollars additional exemption void because not incorporated in the old law, Copland v. Pirie 26 W. 481.

Under sub. 4 plaintiff may have property attached and debtor should make claim, Zelinsky v. Price 8 W. 256.

Person leaving the State with intent to defraud creditors has no right of exemption and his wife can not claim it on his behalf, Carter v. Davis 6 W. 327.

Failure to include all property in list to the sheriff will not defeat exemption, Mikkleson v. Parker 3 W. T. 527.

Implements capable of double use may be claimed for either, State ex rel. Achey v. Creech 18 W. 186.

Partner is entitled to exemption out of partnership property against levy for his

Individual debt, Dennis v. Kass 11 W. 353.

Partners can not claim partnership property, Charleston v. McGraw 3 W. T. 344.

Additional exemption Act '97 p 93 invalid because not incorporated to make

new law read complete, In re Buelow 98 Fed. Rep. 86.

Under sub. 4 \$250 and fuel and provisions may be claimed, id.

**AN ACT** in relation to exemptions, and providing that no property shall be exempt from certain claims. Approved March 14, 1903. Laws '03 p 135.

**§7852. No Exemption for Wages or Client's Money.** §1. That from and after the passage of this act, no property shall be exempt from execution for clerk's, laborer's, or mechanic's wages earned within this State, nor for actual necessities, not exceeding fifty dollars in value or amount furnished to the defendant or his family within sixty days preceding the beginning of an action to recover therefor, nor shall any property be exempt from execution issued upon a judgment against an attorney or agent on account of any liability incurred by such attorney or agent to his client or principal on account of any moneys, or other property coming into his hands, from or belonging to his client or principal. "Provided, That nothing herein shall be construed as repealing or in any wise affecting [§8341] section 5412 of Ballinger's Annotated Codes and Statutes of Washington, as amended by the law of 1901, relative to the exemptions in garnishment suits."

Section not obnoxious to exemption provisions of constitution, In re Vonhee 238 Fed. 422.

§8022.

Does not apply to money paid to third party nor to homestead exemptions, Ervay v. Hill 46 W. 457.

Fact of "necessaries" must appear, Byam v. Albright 94 W. 108.

Cited 89 W. 412.

Exemption of wages in garnishment,

**§7853. Householder Defined.** §2. A householder as designated in all statutes relating to exemptions is defined to be:

1. The husband and wife or either.

2. Every person who has residing with him or her, and under his or her care and maintenance, either:

(a) His or her minor child or the minor child of his or her deceased wife or husband.

(b) A minor brother or sister or the minor child of a deceased brother or sister.

(c) A father, mother, grandfather or grandmother.

(d) The father, mother, grandfather or grandmother of deceased husband or wife.

(e) An unmarried sister, or any other of the relatives mentioned in this section who has attained the age of majority, and are unable to take care of or support themselves. L. '97 93.

Person remarrying within six months after divorce is not householder—issue illegitimate, Peerless Pacific Co. v. Burck-

hard 90 W. 221.

Head of family defined, 223 §49.

**Supplementary—AN ACT** to exempt from execution and attachment certain insurance moneys. Approved March 19, 1895. Laws '95 p 135.

**§7854. Fire Insurance Exempt.** §1. That whenever property, which by the laws of this state is exempt from execution or attachment, is insured, and the same is destroyed by fire, then the insurance money coming to or belonging to the person thus insured to an amount equal to the exempt property thus destroyed, shall be exempt from execution and attachment.

Person remarrying before six months has no exemptions—marriage void—issue illegitimate—another ceremony after six months does not cure, Peerless Pacific Co. v. Burckhard 90 W. 221.

was exempt even though money paid for premium was not exempt, Puget Sound Etc. Packing Co. v. Jeffs 11 W. 466.

It should appear by the proceedings that property was exempt, Winsor v. McLachlan 12 W. 154.

Prior to this statute it was held that insurance money from exempt property

**Supplementary—AN ACT** exempting the proceeds of life insurance from liability for debt, and declaring an emergency. Approved March 20, 1895. Laws '95 p 336.

**§7855. Life Insurance Exempt.** §1. That the proceeds or avails of all life and accident insurance shall be exempt from all liability for any debt. L. '97 70.



Divorce does not defeat wife if named as beneficiary. *Humphrey v. Mutual Life Ins. Co.* 86 W. 672.

Exemption extends only to insured and his debts and not after-incurred debts of beneficiary. *Rieff v. Armour & Co.* 79 W. 48.

Policies payable to estate exempt. Cannot be used even for funeral expenses or family allowance. *German-Am. Bank v. Godman* 88 W. 231.

Is part of estate if not payable to beneficiary. *In re Blattner's Estate* 89 W. 412.

Section limited by §7855a. *Elsom v. Gadd* 93 W. 603.

Not impliedly repealed. *Northwestern Ins. Co. v. Chehalis Bank*, 65 W. 374.

The exemption of life insurance not affected by the insolvency of the deceased,

*Northwestern Ins. Co. v. Chehalis Bank*, 65 W. 374.

Note dated after statute presumed to be for debt after the statute—includes endowment policies—not exempt in bankruptcy. *Flood v. Libby* 38 W. 366.

Life insurance exempt to bankrupt. *Holden v. Stratton* 198 U. S. 202.

Act is prospective. *In re Heilbron's Estate* 14 W. 536.

Insurance policies having cash surrender value are not exempt in bankruptcy. *In re Holden (C. C. A.)* 113 Fed. Rep. 141.

Policies without surrender value are not assets in bankruptcy. *In re Buelow* 98 Fed. Rep. 86.

Cited 77 W. 629.

**§7855a. Life Insurance—Preference Rights to Proceeds of Policy—Creditors' Rights—Widows' Rights.** §36. If a policy of insurance is effected by any person on his own life, or on another life in favor of a person other than himself having an insurable interest therein, the lawful beneficiary thereof, other than himself or his legal representatives, shall, unless contrary to the terms of the policy, be entitled to its proceeds against the creditors and representatives of the person effecting the same; and the person to whom a policy of life insurance, is made payable may maintain an action thereon in his own name; Provided, That, subject to the statute of limitation, the amount of any premium for said insurance paid in fraud of creditors, with interest thereon, shall inure to their benefit from the proceeds of the policy, but the company issuing the policy shall be discharged of all liability thereon by payment of its proceeds in accordance with its terms, unless, before such payment, the company shall have written notice by or in behalf of a creditor, with specification of the amount claimed, claiming to recover for certain premiums paid in fraud of creditors. Every policy of life insurance made payable to or for the benefit of a married woman, or after its issue assigned, transferred or in any way made payable to a married woman, or to any person in trust for her or for her benefit, whether procured by herself, her husband or by any other person, and whether the assignment or transfer is made by her husband or by any other person, shall, unless contrary to the terms of the policy, inure to her separate use and benefit, and to that of her children, subject to the provisions of this section relative to premiums paid in fraud of creditors. L. '09 556 §36.

**Supplementary—AN ACT to exempt pension money from levy and attachment for debt.** Approved March 6, 1890. Laws '90 p 88.

**§7856. Pension Exempt.** §1. Any money received by any citizen of the State of Washington as a pension from the government of the United States, whether the same be in the actual possession of such person or be deposited or loaned by him, shall be exempt from execution, attachment or seizure by or under any legal process whatever.

**§7857. Pension Exempt Though Debtor Absconds.** §2. When a debtor dies or absconds and leaves his family any money exempted by this act, the same shall be exempt to his family as provided in section 1 of this act.

**§7858. Waiver of Exemption in Writing and Acknowledgment.** §349.—348. This act shall not be so construed as to prevent any single man, or married man his wife joining him, from waiving by agreement in writing, the benefit of this act: Provided, That any agreement of waiver made by a husband and wife, shall be witnessed and acknowledged as required in case of a deed conveying real estate. And, provided also, That nothing in this chapter shall be construed to exempt from attachment or execution, the property, real or personal, of non-residents, or a person who has left, or is about to leave the state, with the intent to defraud his creditors.

Chattels exempt may be mortgaged. *Cammarano v. Longmire* 99 W. 360.

Non-resident cannot claim exemption. *Churchill v. Miller* 90 W. 694.

**\$7859 CIVIL PROCEDURE Executions, Exemptions, Homesteads \$7859**

Attachment, §7379; mortgage of homestead, §7865. *Gullickson v. Fenlon* 48 W. 503.

Waiver of exemption invalid, *Slyfield v. Willard* 43 W. 179. Motion for dissolution of attachment is not waiver, *State ex rel. Hill v. Gardner* 32 W. 550.

Husband may waive on personal property, *First Nat. Bank v. Fowler* 54 W. 65. Person who has left the State with intent to defraud creditors is not entitled to exemption, *Carter v. Davis* 6 W. 327.

Debtor cannot return and claim home-

**\$7859. Debtor's Claim of Exemption Procedure.** §349.—349. When a debtor claims personal property as exempt, he shall deliver to the officer making the levy an itemized list of all the personal property owned or claimed by him, including money, bonds, bills, notes, claims and demands, with the residence of the person indebted upon the said bonds, bills, notes, claims and demands, and shall verify such list by affidavit. He shall also deliver to such officer a list by separate items of the property he claims as exempt. If the husband be absent or incapable of acting, the claim may be made, the list delivered and verified by the wife. If the creditor, his agent or attorney demand an appraisement thereof, two disinterested householders of the neighborhood shall be chosen, one by the debtor, and the other by the creditor, his agent or attorney, and these two if they cannot agree, shall select a third. [but if either party fail to choose an appraiser, or the two fail to select a third] or if one or more of the appraisers fail to act, the officer shall appoint one. The appraisers shall forthwith proceed to make a list by separate items, of the personal property selected by the debtor as exempt, which they shall decide as exempt, stating the value of each article, and annexing to the list, their affidavit to the following effect. "We solemnly swear that to the best of our judgment the above is a fair cash valuation of the property therein described" which affidavit shall be signed by two appraisers at least, and be certified by the officer administering the oaths. The list shall be delivered to the officer holding the execution or other process, and be by him annexed to and made part of his return, and the property therein specified shall be exempt from levy and sale, and the other personal estate of the debtor shall remain subject thereto. In case no appraisement be required the officer shall return with the process the list of the property claimed as exempt by the debtor. The appraisers shall each be entitled to one dollar, to be paid by the creditor, if all the property claimed by the debtor shall be exempt, otherwise to be paid by the debtor.

Claim of exemption after request for continuance of sale is in time, *Shell v. Svenson* 93 W. 40.

Creditor waiving appraisement admits valuation in claim of exemption, *State ex rel McKee v. McNeill* 58 W. 47. If no answer made, *U. S. Fidelity etc. Co. v. Hollenshead* 51 W. 326.

If all exempt one list is sufficient—if part not exempt balance may be recovered, *Wiser v. Thomas* 39 W. 40.

Officers held liable for conversion of exempt property—nonresidence—damages—goods on conditional sale, *Messenger v. Murphy* 33 W. 353.

After debtor's claim if creditor does not demand appraisement officer should release levy, *American Paper Co. v. Sullivan* 34 W. 391.

Failure to include property in list will not defeat exemption, *Mikkleson v. Parker* 3 W. T. 527.

**AN ACT defining a homestead and providing for the manner of the selection of the same.** Approved March 13, 1895. Laws '95 p 109.

**\$7860. Extent of Homestead.** §1. The homestead consists of the dwelling house, in which the claimant resides, and the land on which the same is situated, selected as in this act provided.

Applied to claimant of possession during mortgage redemption, *Washburn v. Wilen* 96 W. 480.

Act does not supersede provision setting aside estate of less than \$1,000 for support of the family, *Scott v. Stark* 75 W. 610.

Several non-contiguous lots may be claimed as exempt, *Morse v. Morris* 57 W. 43.

Bankrupt may file claim in contemplation of bankruptcy, *In re Thompson* 140 Fed. 257.

Proceeds of federal homestead not exempt *Ritzville Hdw. Co. v. Bennington* 50 W. 111.

Wife driven from home held entitled to homestead of four lots and two houses though not previously selected, *In re Murphy's Estate* 46 W. 574.

No homestead unless declaration filed, *Donaldson v. Winningham* 48 W. 374.

With declaration filed actual occupancy not required—sale bad if cannot be sustained on ground that exemption has been increased—action to recover is not collateral attack, *Lewis v. Mauerman* 35 W. 156.

Homestead is vested interest—selections under old law valid—sale under execution, *Whitworth v. McKee* 32 W. 83.



**§7861 CIVIL PROCEDURE Executions, Exemptions, Homesteads §7861**

This act does not repeal §7849 and section may be made at any time before sale, *Weiss v. Stewart* 16 W. 376, *Ross v. Howard* 25 W. 1. Wife may maintain action to protect homestead in community property, *Ross v. Howard* 25 W. 1.

Homestead is not abandoned by failure to select under this act, *Anderson v. Stadlman* 17 W. 433. Bankrupt in city can not claim homestead on rural tract of land on which he has not resided for several years, *In re Buelow* 98 Fed. Rep. 86.

**§7861. From What Property Selected.** §2. If the claimant be married the homestead may be selected from the community property, or the separate property of the husband, or with the consent of the wife from her separate property. When the claimant is not married but is the head of a family within the meaning of section 23 of this act, the homestead may be selected from any of his or her property.

Husband may after death of wife claim convey fee simple title, *Moyses v. Nyboe* homestead out of community property and 90 W. 257.

**§7862. When from Wife's Separate Property.** §3. The homestead cannot be selected from the separate property of the wife without her consent, shown by her making, the declaration of homestead.

**§7863. Exemption from Levy.** §4. The homestead is exempt from execution or forced sale, except as in this act provided.

Proceeds of sale exempt, *Becher v. Shaw* 44 W. 166. be shown at confirmation of sale, *Waldron v. Kineth* 41 W. 459.

Sales of homestead void—homestead may

**§7864. When Liable to Execution.** §5. The homestead is subject to execution or forced sale in satisfaction of judgments obtained—1. On debts secured by mechanic's, laborer's, materialmen's or vendor's liens upon the premises. 2. On debts secured by mortgages on the premises executed and acknowledged by the husband and wife or by any unmarried claimant. L. '09 71.

An execution sale cannot be had upon prior to filing declaration, *Snelling v. Puta* a judgment entered upon unsecured promissory notes, where prior to issuance of execution, a declaration of homestead had been filed, although judgment was entered prior to filing declaration, *Snelling v. Puta* 66 W. 165. Mechanics' lien filed before declaration is prior, *Olson v. Goodsell* 56 W. 251.

**§7865. Encumbrance.** §6. The homestead of a married person cannot be conveyed or encumbered unless the instrument by which it is conveyed or encumbered is executed and acknowledged by both husband and wife.

Mortgage by husband prior to declaration by wife valid, *Hookway v. Thompson* 56 W. 57.

**§7866. Abandonment.** §7. A homestead can be abandoned only by a declaration of abandonment, or a grant thereof, executed and acknowledged:

1. By the husband and wife, if the claimant is married.
2. By the claimant, if unmarried.

Residence on homestead may be abandoned without losing right, *Byam v. Albright* 94 W. 108. Widow ignorant of her rights does not abandon homestead by giving quit claim deed and re-purchasing and complying with the law—residence established—appraisal

Removal from homestead is not abandonment, *Wentworth v. McDonald* 78 W. 546. *Smith v. Ferry* 43 W. 460.

**§7867. Abandonment to Be Filed.** §8. A declaration of abandonment is effectual only from the time it is filed in the office in which the homestead was recorded.

**§7868. Appraisement.** §9. When the execution for the enforcement of a judgment obtained in a case not within the classes enumerated in section five is levied upon the homestead, the judgment creditor may apply to the superior court of the county in which the homestead is situated for the appointment of persons to appraise the value thereof.

No appraisement necessary if no homestead in existence, *Scott v. Guiberson*, 71 or 72 W. Conveyance not fraud on judgment creditor not diligent in subjecting excess to judgment, *Melkle v. Cloquet* 44 W. 513.

**§7869. — Petition for.** §10. The application must be made upon verified petition, showing:

1. The fact that an execution has been levied upon the homestead;
2. The name of the claimant;
3. That the value of the homestead exceeds the amount of the homestead exemption.

Section constitutional, *Brace & Hergert Mill Co. v. Burbank* 87 W. 356.

**§7870. — Petition to Be Filed. §11.** The petition must be filed with the clerk of the superior court.

**7871. Service of Petition. §12.** A copy of the petition with a notice of the time and place of hearing, must be served upon the claimant, at least ten days before the hearing.

**§7872. Appraisers. §13.** At the hearing the judge may, upon the proof of the service of a copy of the petition and notice, and of the facts stated in the petition, appoint three disinterested resident freeholders of the county to appraise the value of the homestead.

**§7873. Oath. §14.** The persons appointed, before entering upon the performance of their duties, must take an oath to faithfully perform the same.

**§7874. View. §15.** They must view the premises and appraise the value thereof and if the appraised value exceeds the homestead exemption, they must determine whether the land claimed can be divided without material injury.

**§7875. Report. §16.** Within fifteen days after their appointment they must make to the court a report in writing which report must show the appraised value and their determination upon the matter of a division of the land claimed.

**§7876. Order of Court. §17.** If, from the report, it appears to the court that the land claimed can be divided without material injury the court must, by an order, direct the appraisers to set off to the claimant so much of the land including the residence, as will amount in value to the homestead exemption, and the execution may be enforced against the remainder of the land.

**§7877. Sale. §18.** If, from the report, it appears to the court that the land claimed exceeds in value the amount of the homestead exemption and that it cannot be divided, the court must make an order directing its sale under the execution.

**§7878. — Bid. §19.** At such sale no bid must be received unless it exceeds the amount of the homestead exemption.

**§7879. — Proceeds. §20.** If the sale is made, the proceeds thereof, to the amount of the homestead exemption, must be paid to the claimant, and the balance applied to the satisfaction of the execution.

**§7880. — Proceeds Exempt. §21.** The money paid to the claimant is entitled, to the same protection against legal process and the voluntary disposition of the husband, which the law gives to the homestead.

**§7881. Appraisers' Fees. §22.** The compensation of the appraisers, shall be two dollars per day each.

**§7882. Costs. §23.** The execution creditor must pay the costs of these proceedings in the first instance; but in the case provided for in sections seventeen and eighteen the amount so paid must be added as costs on execution, and collected accordingly.

**§7883. Value of Homestead. §24.** Homesteads may be selected and claimed in lands and tenements with the improvements thereon, not exceeding in value the sum of two thousand dollars. The premises thus included in the homestead must be actually intended and used for a home for the claimants, and shall not be devoted exclusively to any other purposes.

Bankrupt living in hotel entitled to exemption. In re Robison 215 Fed. 662. claim—once a homestead always a homestead, *Byam v. Albright* 94 W. 108.

Qualification refers to time of filing Residence held not established, *Schoenreider v. Tuengel* 96 W. 103.



**§7884. "Head of the Family" Defined.** §25. The phrase "head of the family," as used in this act, includes within its meaning:

1. The husband, or wife when the claimant is a married person;
2. Every person who has residing on the premises with him or her and under his or her care and maintenance, either:
  1. His or her minor child, or the minor child of his or her deceased wife or husband;
  2. A minor brother or sister, or the minor child of a deceased brother or sister;
  3. A father, mother, grandmother or grandfather;
  4. The father, mother, grandfather or grandmother of deceased husband or wife.
  5. An unmarried sister, or any other of the relatives mentioned in this section who has attained the age of majority, and are unable to take care of or support themselves.

Person remarrying within six months after divorce is not head of family—issue illegitimate, *Peerless Pacific Co. v. Burckhard* 90 W. 221.

Claimant must be "head of family" at time declaration filed, *In re Borrow's Estate* 92 W. 143.

Householder defined, §7853.

**§7885. If Husband or Wife Insane—Order to Dispose of Homestead.**

§26. In case of a homestead, if either the husband or wife, shall become hopelessly insane, upon application of the husband or wife, not insane, to the superior court of the county in which the homestead is situated, and upon due proof of such insanity, the court may make an order permitting the husband or wife not insane, to sell and convey, or mortgage, such homestead.

Mortgage of homestead prior to this act void when wife insane, *Curry v. Wilson* 45 W. 19.

**§7886. Notice—Service—Prosecuting Attorney's Duties.** §27. Notice of the application for such order shall be given by publication of the same, in a newspaper published in the county in which such homestead is situated, if there be a newspaper published therein, once each week for three successive weeks, prior to the hearing of such application, and a copy of such notice shall be served upon the nearest male relative of such insane husband or wife, resident in this state, at least three weeks prior to such application and in case there be no such male relative known to the applicant a copy of such notice shall be served upon the prosecuting attorney of the county in which such homestead is situated; and it is hereby made the duty of such prosecuting attorney, upon being served with a copy of such notice, to appear in court and see that such application is made in good faith, and that the proceedings thereon are fairly conducted.

**§7887. Petition for Order.** §28. Thirty days before the hearing of any application under the provisions of this act, the applicant shall present and file in the court in which such application is to be heard a petition for the order mentioned subscribed and sworn to by the applicant, setting forth the name and age of the insane husband or wife; a description of the premises constituting the homestead; the value of the same; the county in which it is situated; and such facts in addition to that of the insanity of the husband or wife relating to the circumstances and necessities of the applicant and his or her family as he or she may rely upon in support of the petition.

**§7888. Effect of Order.** §29. If the court shall make the order provided for in the twenty-sixth section of this act, the same shall be entered upon the minutes of the court, and thereafter any sale, conveyance [or] mortgage made in pursuance of such order shall be as valid and effectual as if the property affected thereby was the absolute property of the person making such sale, conveyance, or mortgage, in fee simple.

**§7889. Declaration of Homestead.** §30. In order to select a homestead the husband or other head of a family, or in case the husband has not made such selection, the wife, must execute and acknowledge, in the same manner as a grant of real property is acknowledged, a declaration of homestead, and file the same for record.

Exemption claimed prior to execution sale, good. *Mowbray-Pearson Co. v. Per-* shall 92 W. 516.

Execution good against unacknowledged homestead, *Covert v. Durrer* 76 W. 454.

Claimant must be head of family at time

declaration filed, *In re Borrow's Estate* 92 W. 143.

Husband may select in fee from community property—is due process of law not depriving heirs—title of act valid, *Stewart v. Fitzsimmons* 86 W. 55.

Declaration filed prior to execution is in time, *Kenyon v. Erskine* 69 W. 110.

Residence before and after filing declaration may be shown to show bona fides, *Smith v. Veysey* 30 W. 18.

§7890. — Contents of. §31. The declaration of homestead must contain:

1. A statement, showing that the person making it is the head of a family; or when the declaration is made by the wife, showing that her husband has not made such declaration, and that she therefore makes the declaration for their joint benefit;

2. A statement that the person making it is residing on the premises or has purchased the same for a homestead and intends to reside thereon and claims them as a homestead;

3. A description of the premises;

4. An estimate of their actual cash value.

Declaration of homestead will not defeat mechanics' lien, *Brace & Hergert Mill Co. v. Burbank* 87 W. 356.

§7891. — Record. §32. The declaration must be recorded in the office of the auditor of the county in which the land is situated.

§7892. Descent of Homestead. §33. From and after the time the declaration is filed for record the premises therein described constitute a homestead. If the selection was made by a married person from the community property, the land, on the death of either of the spouses, vests in the survivor, subject to no other liability than such as exists or has been created under the provisions of this act; in other cases, upon the death of the person whose property was selected as a homestead, it shall go to his heirs or devisees, subject to the power of the superior court to assign the same for a limited period to the family of the decedent; but in no case shall it be held liable for the debts of the owner, except as provided in this act.

Heirs take homestead though residence abandoned, *Byam v. Albright* 94 W. 108. descends as provided in this section, *Austin v. Gifford* 24 W. 172

Widow cannot select homestead from husband's separate property, *In re Lloyd's Estate* 34 W. 84. Child within sixteen days of majority denied use of mother's community realty, *Stewin v. Thrift* 30 W. 36.

Homestead set apart in administration

## EXECUTIONS—SALES.

Mortgage foreclosure, executions, etc.

§8201.

levied on §8121.

Personal property held only when actually Writs and levies §7827.

§7893. Levy on Property. §355.—355. When the writ of execution is against the property of the judgment debtor, it shall be executed by the sheriff as follows.

1. If property has been attached, he shall endorse on the execution, and pay to the clerk forthwith the amount, of the proceeds of sales of perishable property or debts due the defendant, received by him, sufficient to satisfy the judgment.

2. If the judgment is not then satisfied, and property has been attached and remains in his custody, he shall sell the same, or sufficient thereof to satisfy the judgment.

3. If then any portion of the judgment remains unsatisfied, or if no property has been attached or the same has been discharged, he shall levy on the property of the judgment debtor, sufficient to satisfy the judgment.

4. Property shall be levied on in like manner and with like effect as similar property is attached.

5. Until a levy, personal property shall not be affected by the execution. When property has been sold or debts received by the sheriff on execution, he shall pay the proceeds thereof, or sufficient to satisfy the judgment, as commanded in the writ.



6. When property has been attached and it is probable that such property will not be sufficient to satisfy the judgment, the execution may be levied on other property of the judgment debtor without delay. If after satisfying the judgment, any property or the proceeds thereof, remain in the custody of the sheriff, he shall deliver the same to the judgment debtor.

No lien on personal property until seizure. 413.  
 ure, §§8121, 7839; but see §7958.

Levy on franchises, §7839.

Levy on tenant in common of realty, §7836; of joint owners of personalty, §7837.

Levy by garnishment, §7999; stock in corporation, §§8003, 8016.

Executions in foreclosure of mortgage, §8201.

Attached property to be sold by this procedure, §7394; application of proceeds, §7399.

Levy in attachment, §7391; in replevin, §8428.

Act of '97 page 70 construed and held invalid in part, *Dennis v. Moses* 18 W. 537; *Swinburne v. Mills* 17 W. 611; *Wilson v. Wold* 21 W. 398; *Raymond v. Bayles* 26 W. 493.

Posting notices of sale of growing crop is not levy, *Cupples v. Level* 54 W. 299.

The law of British Columbia not being pleaded, it will be presumed the same as this state and there is no law in this state authorizing the sale of the stock of a stockholder of a foreign corporation, *Daniel v. Gold Hill Mining Co.* 28 W. 411.

If mortgagee bids more than mortgage he is liable to mortgagor for balance, *Moody v. Northwestern Etc. Bank* 20 W. 435.

§7894. Sheriff May Permit Debtor to Retain Personal Property—Bond—Liability of Sheriff. §358.—358. When the sheriff shall levy upon personal property, by virtue of an execution, he may permit the judgment debtor to retain the same, or any part thereof, in his possession until the day of sale, upon the defendant executing a written bond to the sheriff, with sufficient surety, in double the value of such property, to the effect that it shall be delivered to the sheriff at the time and place of sale, and for non-delivery thereof an action may be maintained upon such bond by the sheriff or the plaintiff in the execution: but the sheriff shall not thereby be discharged from his liability to the plaintiff for such property.

§7895. Postponement of Sale. §361.—361. If at the time appointed for the sale, the sheriff should be prevented from attending at the place appointed, or being present should deem it for the advantage of all concerned to postpone the sale for want of purchasers, or other sufficient cause, he may postpone the sale not exceeding one week next after the day appointed, and so from time to time for the like cause, giving notice of every adjournment, by public proclamation made at the same time, and by posting written notices of such adjournment, under the notice of sale originally posted by him. The sheriff for like causes may also adjourn the sale from time to time, not exceeding thirty days beyond the day at which the writ is made returnable, with the consent of the plaintiff endorsed upon the writ.

Personalty sale set aside for grossly inadequate price, *Triplett v. Bergman* 82 W. 639.

§7896. Sheriff's Bill of Sale. §362.—362. When the purchaser of any personal property, capable of manual delivery, and not in the possession of a third person, association or corporation, shall pay the purchase money, the sheriff shall deliver to him the property, and if desired shall give him a bill of sale containing an acknowledgement of the payment. In all other sales of personal property, the sheriff shall give the purchaser a bill of sale with the like acknowledgement.

§7897. Crying Sale—Sale of Land by Parcels. §363.—363. The form and manner of sale of real estate by execution shall be as follows: The sheriff shall proclaim aloud at the place of sale, in the hearing of all the by-

standers: "I am about to sell the following tracts of real estate (here reading the description,) upon the following execution: (here reading the execution). He shall also state the amount which he is required to make upon the execution, which shall include damages, interest and costs up to the day of sale, and increased costs. He shall then offer the land for sale, the lots and parcels separately or together as he shall deem most advantageous. All land except town lots shall be sold by the acre.

Court has equitable power to direct sale, *v. Fairhaven Land Co.* 56 W. 437.

*Black v. Suydam* 81 W. 279.

Time and manner of sale, §7906.

It is in discretion of the sheriff in the absence of an order to sell in mass or

Sale by tracts valid, *Bartlett Estate Co. v. Feek v. Brewer* 11 W. 264.

§7898. **Measuring Parcel.** §364.—364. When the land is sold by the acre and any less number of acres than the whole tract or parcel is sold, it shall be measured off to the purchaser in a square form, from the northeast corner of the tract or parcel, unless some person having an interest in the land shall, at the sale, or prior thereto and before the bidding is made, request that the land sold, shall be taken from some other part, or in some other form; in such case, if such request is reasonable, the officer making the sale shall sell accordingly.

§7899. **Amount Stated, More or Less.** §365.—365. When an entire tract or parcel of land is sold by the acre, it shall not be measured, but shall be deemed and taken to contain the number of acres named in the description, and be paid for accordingly; and when the number of acres is not contained in the description, the officer shall declare according to his judgment, how many acres are contained therein, which shall be deemed and taken to be the true number of acres.

§7900. **Striking Sale and Payment of Money—Confirmation of Supreme Court Sale.** §366.—366. The officer shall strike off the land to the highest bidder, who shall forthwith pay the money bid to the officer, who shall return the money with his execution and his doings thereon, to the clerk of the court, from which the execution issued, according to the order thereof: Provided, however, That when final judgment shall have been entered in the supreme court, and the execution upon which sale has been made, issued from said court, the proceedings on execution and return shall be docketed for confirmation in the superior court in which the action was originally commenced, and like proceedings shall be had as though said execution had issued from the said superior court.

Execution creditor is not bona fide purchaser at his own sale—takes only actual interest of debtor, *American Sav. Bk. v. Helgesen*, 67 W. 572.

Refusal of sheriff to accept anything but cash is fair, *Bartlett Estate Co. v. Fair-*

*haven Land Co.* 56 W. 437.

Sheriff not entitled to commissions where mortgagee plaintiff bids in property for amount of judgment, *State v. Prince*, 9 W. 107; *Soderberg v. King Co.*, 15 W. 194; *Moody v. N. W., etc., Bank*, 20 W. 413.

§7901. **Purchaser Evicted May Recover of Plaintiff.** §368.—368. If the purchaser of real property sold on execution, or his successor in interest, be evicted therefrom in consequence of the reversal of the judgment, he may recover the price paid with interest and the costs and disbursements of the suit by which he was evicted, from the plaintiff in the writ of execution.

§7902. **Contribution on Execution by Joint Obligors and Sureties.** §369.—369. When property liable to an execution against several persons is sold thereon, and more than a due proportion of the judgment is levied upon the property of one of them, or one of them pays without a sale more than his proportion, he may compel contributions from the others; and when a judgment is against several, and is upon an obligation or contract of one of them as security for another, and the surety pays the amount or any part thereof, either by sale of his property or before sale, he may compel repayment from the principal. In such case the person so paying or contributing, shall be entitled to the benefit of the judgment to enforce contribution or repayment, if within thirty days after his payment, he file with the clerk of the court where the judgment was rendered, notice of his payment and claim to contribution or repayment. Upon filing such notice the clerk shall make an entry thereof in the margin of the docket where the judgment is entered.



Sureties may have execution, §8469; co-judgment, §§8449, 8090.  
 sureties contribution, §8470.

Action of surety against principal, §8465. Owner paying mechanic's lien has con-  
 Ne exeat by surety, etc., §8220. tribution against contractor, Sweeney v.  
 Archibald 60 W. 595.

How persons jointly liable bound by

**Substitute—AN ACT** relating to the sales of property under execution, decrees, and orders of sale, and the confirmation of sheriff's sales, and redemption therefrom, and repealing an act passed by the legislature of the State of Washington, March 2, 1897, approved March 10, 1897, ('97 p 70), entitled "An act relating to the sale of property under execution and decrees, and the confirmations of sheriff's sales, and repealing Sections 511, 512, 513, 514, 515, 516, 517, 518, 519, 520 and 521 of Vol. 2 of Hill's Annotated Statutes and Codes of the State of Washington (C81 §§370-71, 373-80. Laws '86 p 116 §1), relating to the redemption of real estate sold on decrees of foreclosure and on execution," and declaring an emergency. Approved March 8, 1899. Existing rights and proceedings saved. Laws '99 p 85.

Former act, Laws '97 p 70.

**§7903. Execution on Mortgage Judgment. §1.** A decree of foreclosure of mortgage or other lien may be enforced by execution as an ordinary judgment or decree for the payment of money. The execution shall contain a description of the property described in the decree. The sheriff shall endorse upon the execution the time when he receives it, and he shall thereupon forthwith proceed to sell such property, or so much thereof as may be necessary to satisfy the judgment, interest and costs upon giving the notice prescribed in section three (3) of this act.

A purchaser at foreclosure sale is es- 69 W. 643.

topped to deny the right of redemption This act applies to prior judgments,  
 for the benefit of minors, though proceed- Whitworth v. McKee 32 W. 83.  
 ings to redeem were not taken, where non- This act is, chiefly, a re-enactment of  
 compliance was induced by agreement to Code 1881.

make a quit-claim deed, Mohney v. Ellis,

**§7904. Deficiency Judgments by Agreement—Waiver of Mortgage Security. §2.** When there is an agreement of the judgment debtor for the payment of any sum of money secured by a mortgage or other lien, and a deficiency judgment is consented to in said agreement, the court may direct in the decree that the balance due and costs which may remain unsatisfied after the sale of the property shall be satisfied from any property of the judgment debtor, and if any part of the judgment, interest and costs remains unsatisfied, the sheriff shall forthwith proceed to levy upon any property of the judgment debtor not exempt from execution, and all subsequent proceedings under said execution shall conform to the provisions of this act. The judgment creditor may also obtain from the clerk of the court execution on executions in the ordinary form for such deficiency: Provided, That in case of mortgage foreclosure where the mortgage contains a stipulation that no deficiency judgment shall be taken against the mortgagor, but that the mortgagee shall look to the mortgaged premises for satisfaction of his claim, no deficiency judgment shall be allowed. The commencement of an action for the recovery of a debt secured by mortgage not asking a foreclosure of the mortgage and brought before a foreclosure of the mortgage and sale thereunder, shall be, and be deemed to be, a waiver of the mortgage security; and this provision may not be waived or avoided by agreement contained in the mortgage or otherwise.

Deficiency judgments, §§8202, 8204, 8213; If deficiency judgment not stipulated for  
 levy under original execution, §8212. it will be allowed, Bradley Eng & Mach.

Mortgagee can maintain but one action, Co. v. Muzzy 54 W. 227.  
 §8206.

**§7905. Notice of Sale—Costs. §3.** Before the sale of property under execution, order of sale or decree, notice thereof shall be given as follows:

1. In case of personal property, by posting written or printed notice of the time and place of sale in three (3) public places in the county where the sale is to take place, for a period of not less than ten (10) days prior to the day of sale.

2. In case of real property, by posting a similar notice, particularly describing the property for a period of not less than four (4) weeks prior to the

day of sale, in three (3) public places in the county, one of which shall be at the court house door, where the property is to be sold, and publishing a copy thereof once a week, consecutively for the same period, in a newspaper of general circulation published in the county.

3. All notices of sales of property on execution or order of sale required by law to be published in any newspaper shall be so published in a newspaper of the county which shall be selected by the sheriff, and if there is no newspaper published in the county, then such notice shall be published in the newspaper published in this State nearest to the place of sale: Provided, That if the person at whose instance the execution or order of sale is issued, or his attorney, shall present to the sheriff a receipt of the publisher of any newspaper showing full payment for the publication, then the notice shall be published in that newspaper: And provided, further, That the charge for any such publication shall not exceed seventy-five cents per square for first insertion, and thirty-seven and one-half cents per square for each subsequent insertion. L. '03 381.

Sheriff cannot select paper if receipt of leasehold void, *Reilly v. Anderson* 32 W. 58.  
shown—paper qualified, *State ex rel. Lewis v. Hodge* 90 W. 487.

Confirmation cured error in notice, good—posting at court house door—return, *Prince v. Mottman* 84 W. 287. *Whitworth v. McKee* 32 W. 83.

Personal notice not required, *Johnson v. Johnson*, 66 W. 113. Decree and deed covering all property of a railway company real, personal and mixed, now owned or hereafter to be acquired will not cover land owned but not used against a purchaser of the mortgagor, *National Bank of Commerce v. Lock* 17 W.

Postponement of sale. §7895.

Sale of franchises, §7838.

Personal notice to parties not required, *Merritt v. Graves* 52 W. 57. National Bank of Commerce v. Lock 17 W.

Notice as for personalty given in sale 528.

**§7906. Hour and Manner of Sale.** §4. All sales of property under execution, orders of sale, or decree, shall be made by auction between nine o'clock in the morning and four o'clock in the afternoon. After sufficient property has been sold to satisfy the execution, no more shall be sold. Neither the officer holding the execution, nor his deputy, shall become a purchaser, or be interested in any purchase at such sale. When the sale is of personal property capable of manual delivery, and not in the possession of a third person, association or corporation, it shall be within view of those who attend the sale, and be sold in such parcels as are likely to bring the highest price; and when the sale is of real property, consisting of several known lots or parcels, they shall be sold separately or otherwise as is likely to bring the highest price, or when a portion of such real property is claimed by a third person, and he requires it to be sold separately, such portion shall be sold separately. Sales of real property shall be made at the court house door on Saturday.

Court has equitable power to direct sale, *v. Brewer et al.* 11 W. 264.  
*Black v. Suydam* 81 W. 279.

Sale for installments, §8208.

Third persons are those claiming adversely to the parties—compliance with request, *Bartlett Estate Co. v. Fairhaven Land Co.* 56 W. 437. If a part of mortgagee's premises has been conveyed by mortgagor it is the duty of the court to ascertain whether the land can be sold in parcels without impairing the mortgage security and if so, to order the property retained by the mortgagor, sold first, *Solicitors L. & T. Co. v. W. & I. Ry. Co.* 11 W. 689.

It is within the discretion of the sheriff whether he sells lands under decree of foreclosure, in mass or in parcels, *Feek*

**§7907. When Sales Absolute—Certificate of Sale—Return.** §5. Upon a sale of real property under execution, decree or order of sale, when the estate is less than a leasehold of two years' unexpired term, the sale shall be absolute. In all other cases such property shall be subject to redemption, as hereinafter provided. At the time of the sale the sheriff shall give to the purchaser a certificate of the sale, containing a particular description of the property sold, the price bid for each distinct lot, or parcel, the whole price paid, and when subject to redemption, it shall be so stated. The matters contained in such certificate shall be substantially stated in the sheriff's return of his proceedings upon the writ

Deed after his death to purchaser receiving certificate will not defeat his assignees, *Diamond v. Turner* 11 W. 189. uated wharf and canning plant is not subject to redemption, *Pacific Northwest Packing Co. v. Allen (C. C. A.)* 116 Fed. Rep. 312.

Lease of harbor area on which is sit-



**§7908. Confirmation or Resale. §6.** Upon the return of any sale of real estate as aforesaid, the clerk shall enter the cause, on which the execution or order of sale issued, by its title, on the motion docket, and mark opposite the same: "Sale of land for confirmation," and the following proceedings shall be had:

1. The plaintiff at any time after ten days from the filing of such return shall be entitled, on motion therefor, to have an order confirming the sale, unless the judgment debtor, or in case of his death, his representative, shall file with the clerk within ten days after the filing of such return, his objections thereto.

2. If such objections be filed, the court shall, notwithstanding, allow the order confirming the sale, unless on the hearing of the motion, it shall satisfactorily appear that there were substantial irregularities in the proceedings concerning the sale, to the probable loss or injury of the party objecting. In the latter case, the court shall disallow the motion and direct that the property be resold, in whole or in part, as the case may be, as upon an execution received of that date.

3. Upon the return of the execution, the sheriff shall pay the proceeds of sale to the clerk, who shall then apply the same, or so much thereof as may be necessary, in satisfaction of the judgment. If an order of resale be afterwards made, and the property sell for a greater amount to any person other than the former purchaser, the clerk shall first repay to such purchaser the amount of his bid out of the proceeds of the latter sale.

4. Upon a resale, the bid of the purchaser at the former sale shall be deemed to be renewed and continue in force, and no bid shall be taken, except for a greater amount. An order confirming a sale shall be a conclusive determination of the regularity of the proceedings concerning such sale as to all persons in any other action, suit or proceeding whatever

5. If, after the satisfaction of the judgment, there be any proceeds of the sale remaining, the clerk shall pay such proceeds to the judgment debtor, or his representative, as the case may be, at any time before the order is made upon the motion to confirm the sale: Provided, Such party file with the clerk a waiver of all objections made or to be made to the proceedings concerning the sale; but if the sale be confirmed, such proceeds shall be paid to said party of course; otherwise they shall remain in the custody of the clerk until the sale of the property has been disposed of

Homestead exemption claimed prior to sale is objection to confirmation, *Mowbray-Pearson Co. v. Pershall* 92 W. 516.

It is not incumbent on defendant to attend sale but may object to confirmation, *Scandinavian Am. Bank v. Downs* 76 W. 62.

Confirmation cures failure to publish notice of sale, *Strand v. Griffith*, 63 W. 334.

Confirmation cures defects of notice of sale, *McHugh v. Conner*, 68 W. 229.

Homestead claim on unoccupied land cannot be adjudicated on motion to confirm a judgment sale, *Scott v. Guiberson* 72 W. 36.

Confirmation in partition, §8305; in probate, §9983.

Higher bid not reason for refusing confirmation—personal notice of sale not required—attorney for plaintiff may purchase, *Merritt v. Graves* 52 W. 57.

Defaulting defendant may object to confirmation of mortgage sale and have judgment vacated, *Stark Brothers v. Royce* 44 W. 287.

Confirmation cures defects to make sheriff's deed color of title under §7538, *Johnson v. Bartlett* 50 W. 114.

Confirmation may be had more than six years after sale—is not revival of judgment, *Hyde v. Heaton* 43 W. 433.

Sale of a note vacated for inadequate price—to whom notice to vacate sale given, *Bank v. Doherty* 37 W. 32.

It is the duty of the court to confirm

a sale of property in mass, under mortgage foreclosure, when no substantial irregularity is shown which would cause probable loss to the defendant, *Feek v. Brewer* 11 W. 266.

A purchaser of realty under decree of foreclosure is entitled to possession from acceptance of his bid and prior to confirmation, *State ex rel. Steele Rec. v. N. W. & P. H. Bank* 18 W. 118; *Debenture Corporation v. Warren* 9 W. 312.

The denial of a motion to strike objections to confirmation of sale is a final order and appealable, *Krutz v. Batts* 18 W. 460.

Objections to confirmation filed after time provided by law—should be stricken id.

Objections to confirmation can go only to irregularities in the sale and can not attack jurisdiction of court id.

After confirmation without objection levy and sale can not be quashed for irregularities, *Otis Bros. Co. v. Nash* 26 W. 39.

Confirmation is fraudulent and void when obtained without notice to debtor after agreement to settle claim and restore land to debtor, *Knowles v. Rogers* 27 W. 211.

On confirmation court can not only pass on regularity of sale and can not adjudicate homestead, *Harding v. Atlantic Trust Co.* 26 W. 536.

Creditor receiving proceeds of sale can not impeach it unless he negatives knowledge of fraud, *Potvin v. Denny Hotel Co.*

26 W. 309.

Confirmation is prima facie evidence that sale was regularly made in action to quiet title, Tacoma Grocery Co. v. Draham 8 W.

263.

It seems that successor in interest of judgment debtor may object to confirmation, Hardin v. Day 29 W. 664.

§7909. **Who May Redeem.** §7. Property sold subject to redemption, as above provided, or any part thereof separately sold, may be redeemed by the following persons, or their successors in interest:

1. The judgment debtor, or his successor in interest, in the whole or any part of the property separately sold.

2. A creditor having a lien by judgment, decree or mortgage, on any portion of the property, or any portion of any part thereof, separately sold, subsequent in time, to that on which the property was sold. The persons mentioned in sub-division two of this section are termed redemptioners.

Demand of accounting from sheriff does not prevent action for accounting and recovery of only, actual damage for waste—adjudication of rights of vendee third party, Cogswell v. Brown 102 W. 625.

Where mortgage premises have been sold under foreclosure in parcels, the mortgagee is entitled to redeem any parcel separately. State ex rel. Twiss v. Carpenter et al 19 W. 378.

Purchaser at execution sale under judgment against grantor of mortgagor can not

redeem from mortgage foreclosure sale on ground that grant to mortgagor was fraudulent—Injunction, Preston-Parton Mill Co. v. Dexter Horton & Co. 22 W. 236.

After period of redemption has expired rights are extinguished though no valid deed issued, Stevens v. Ferry 48 Fed. Rep. 7.

Judgment creditor could not redeem prior to Laws '97 p 75 § 15, Geddis v. Packwood 30 W. 270.

§7910. **One Year for Redemption—Terms.** §8. The judgment debtor or his successor in interest, or any redemptioner, may redeem the property at any time within one year after the sale, on paying the amount of the bid with interest thereon at the rate of eight per cent. per annum to the time of redemption, together with the amount of any assessment or taxes which the purchaser or his successor in interest may have paid thereon after purchase, and like interest on such amount; and if the purchaser be also a creditor having a lien, by judgment, decree or mortgage, prior to that of the redemptioner, other than the judgment under which such purchase was made, the amount of such lien with interest.

Tenants in common, mortgagors have equally right to redeem for all, McSorley v. Lindsay, 62 W. 203.

Widower buying community property from purchaser at foreclosure sale held constructive redemptioner for children, Eckert v. not estop party if the other party is not Schmitt 60 W. 23.

A complaint by a redemptioner to set aside a sheriff's deed because made before the time of redemption, fails to state a cause of action when it nowhere alleges

how long after sale the deed was made nor any offer to redeem within the time provided by law, Bryant v. Stetson & Post Co. 13 W. 692.

A purchaser under foreclosure who enters into possession can not be required to account to the mortgagor for rents and profits when he redeems, Hardy v. Herriott 11 W. 460.

Under act '73 redemption applied only to execution and not mortgage sales, Parker v. Dacres 2 W. T. 439; but could impose such a condition, id.

§7911. **Successive Redemptions in Sixty Days—Original Judgment Not a Lien—Notice of Taxes.** §9. If property be so redeemed by a redemptioner, another redemptioner may, within sixty days after the last redemption, again redeem it from the last redemptioner by paying the sum paid on such last redemption with interest at the rate of eight per cent. per annum, and the amount of any taxes or assessment which the last redemptioner may have paid thereon after the redemption by him, with like interest on such amount, and in addition thereto by paying the amount of any liens, by judgment, decree or mortgage, held by said last redemptioner prior to his own, with interest; but the judgment under which the property was sold need not be so paid as a lien. The property may be again, and as often as a redemptioner is so disposed, redeemed from any previous redemptioner within sixty days after the last redemption, on paying the sum paid on the last previous redemption with interest thereon at the rate of eight per cent. per annum, and the amount of any assessments or taxes which the last previous redemptioner paid after the redemption by him, with like interest thereon, and the amount of any liens by judgment, decree or mortgage, other than the judgment under which the property was sold, held by the last redemptioner, previous to his own, with interest. If the purchaser or redemptioner shall pay any taxes or assessments, or have or acquire any such lien as herein mentioned, he must file a statement thereof with the auditor of the county where said property is situate before the property shall have



been redeemed from him, otherwise the property may be redeemed without paying such tax, assessment or lien. Such statement shall be recorded by such Auditor.

**§7912. Certificates of Redemption—Deed After Time Has Expired.**

**§10.** If no redemption be made within one year after the sale, the purchaser or his assignee is entitled to a conveyance; or, if so redeemed, whenever sixty (60) days have elapsed, and no other redemption has been made, or notice given operating to extend period of redemption and the time for redemption has expired, the last redemptioner or his assignee is entitled to a sheriff's deed; but in all cases the judgment debtor shall have the entire period of one year from the date of the sale to redeem the property. If the judgment debtor redeem, he must make the same payments as are required to effect a redemption by the redemptioner. If the judgment debtor redeem, the effect of the sale is terminated and he is restored to his estate. A certificate of redemption must be filed and recorded in the office of the auditor of the county in which the property is situated, and the auditor must note the record thereof in the margin of the record of the certificate of sale.

A redemption from foreclosure sale by of a subsequent mortgage, *De Roberts v. the grantee of the mortgagor extinguishes* *Stiles 24 W. 611.*  
the foreclosure and thereby revives the lien

**§7913. Two or More Redemptions at Same Time—Order of Court.**

**§11.** When two or more persons apply to the sheriff to redeem at the same time, he shall allow the person having the prior lien to redeem first, and so on. The sheriff shall immediately pay the money over to the person from whom the property is redeemed, if he attend at the redemption; or if not, at any time thereafter when demanded. When a sheriff shall wrongfully refuse to allow any person to redeem, his right to redeem shall not be prejudiced thereby, and the sheriff may be required, by order of the court, to allow such redemption.

**§7914. Redemptioner's Notice and Proof. §12.** The mode of redeeming shall be as provided in this section. The person seeking to redeem shall give the sheriff at least five days' written notice of his intention to apply to the sheriff for that purpose. It shall be the duty of the sheriff to notify the purchaser or redemptioner, as the case may be, or his attorney of the receipt of such notice, if such person be within such county. At the time and place specified in such notice the person seeking to redeem may do so by paying to the sheriff the sum required. The sheriff shall give the person redeeming a certificate stating therein the sum paid on redemption, from whom redeemed, the date thereof and a description of the property redeemed. A person seeking to redeem shall submit to the sheriff the evidence of his right thereto, as follows:

1. If he be a lien creditor, a copy of the docket of the judgment or decree under which he claims the right to redeem, certified by the clerk of the court where such judgment or decree is docketed; or if he seeks to redeem upon mortgage, the certificate of the record thereof; also an affidavit, verified by himself, or agent, showing the amount then actually due thereon.

2. A copy of any assignment necessary to establish his claim, verified by the affidavit of himself or agent, showing the amount then actually due on the judgment, decree or mortgage.

3. If the redemptioner or purchaser has a lien prior to that of the lien creditor seeking to redeem, such redemptioner or purchaser shall submit to the sheriff the evidence thereof, and the amount due thereon, or the same may be disregarded.

Sheriff presumed to have determined redemptioner's right to redeem—letter as notice—time of notice, *State ex Stickel v. Shattuck 95 W. 119.*

Purchaser must make sworn statement, or

time will not run, *Kennedy v. ... W. 614.*

One about to redeem from foreclosure sale need give notice only to purchaser or prior redemptioners if any, *Baggot v. Turner 21 W. 339.*

**§7915. Possession, Accounting and Action for Rents and Profits—Farm Property. §13.** The purchaser, from the time of the sale until the redemption, and the redemptioner from the time of his redemption until another redemption except as hereinafter provided is entitled to receive, from the tenant in possession, the rents of the property sold, or the value of the use and occupation thereof. But when any rents or profits have been received by such person or persons thus entitled thereto, from the property thus sold,

preceding the redemption thereof from him, the amount of such rents and profits, over and above the expenses paid for operating, caring for, protecting and insuring the property, shall be a credit upon the redemption money to be paid; and if the redemptioner, or other person entitled to make such redemption, before the expiration of the time allowed for such redemption, files with the sheriff a demand in writing for a written and verified statement of the amounts of such rents and profits thus received, and expenses paid and incurred, the period for redemption is extended five (5) days after such sworn statement is given by such person thus receiving such rents and profits, or by his agent, to the person making such demand, or to the sheriff. It shall be the duty of the sheriff to serve a copy of such demand upon the person receiving such rents and profits, his agent, or his attorney, if such service can be made in the county where the property is situate. If such person shall, for a period of ten days after such demand has been given to the sheriff, fail or refuse to give such statement, such redemptioner or other person entitled to redeem from such sale, making such demand, may bring an action within sixty days after making such demand, but not later, in any court of competent jurisdiction, to compel an accounting and disclosure of such rents, profits and expenses, and until fifteen days from and after the final determination of such action the right of redemption is extended to such redemptioner, or other person making such demand who shall be entitled to redeem. If a sworn statement is given by the purchaser, or other person receiving such rents and profits, and such redemptioner or other person entitled to redeem, who makes such demand, desires to contest the correctness of the same, he must first redeem in accordance with such sworn statement, and if he desires to bring an action for an accounting thereafter he may do so within thirty days after such redemption, but not later: Provided That if such property be farming or agricultural property and be in possession of any purchaser or any redemptioner and is redeemed after the first day of April and before the first day of December and the purchaser or his tenant has performed any work in preparing such property for crops, or planted crops, he shall be entitled to reimbursement for such work and labor or the right to retain possession of such property until the first day of December following, and the redemptioner shall be entitled to collect the reasonable rental value thereof during such farming year, unless such reasonable rental shall have been collected by such purchaser and accounted for to the redemptioner.

**Foreclosure does not terminate lease during redemption, Virges v. Gregory Co. 97 W. 333.**

**Pay for work if redemption after December 1st—expense denied, Woods v. Netherlands Am. Mtg. Bank 92 W. 370.**

**Regulated by law at time of the execution of the mortgage, Clark v. Eltinge 38 W. 376.**

**Purchaser at void foreclosure is mortgagee in possession and required to account—heirs not made parties, Sawyer v. Vermont Loan & Tr. Co. 41 W. 524.**

**The notice need not state the hour when application will be made and service may be proved by testimony of one who served it, Scott v. Patterson 1 W. 487.**

**Accounting by mortgagee in possession on redemption by junior mortgagee, Krutz v. Gardner 25 W. 396.**

**Plaintiff in foreclosure is proper party to petition for writ of assistance, Debenture Corporation v. Warren 9 W. 312.**

**Purchaser of property on foreclosure sale is entitled to possession or rents if there is a tenant from day of sale, State ex rel. Steele v. N. W. H. P. Bank 18 W. 118; Debenture Corporation v. Warren 9 W. 312**

**Purchaser at foreclosure sale is entitled to rents and profits without being required to account therefor to a subsequent redemptioner, Knipe v Austin et al 13 W. 189.**

**Legal title to uplands sold on execution does not pass to purchaser, pending redemption period, so as to authorize him to apply for purchase of abutting tide lands, Hays v. Merchants Nat. Bank 14 W. 192.**

**Where execution debtor has prior to sale made a bona fide assignment of a lease of the premises, the purchaser at execution sale is entitled to neither rents nor possession during redemption period, Griffith v. Burlingame 18 W. 429.**

**The purchaser of the equity of redemption in premises that have been sold under mortgage foreclosure is after he has redeemed entitled to a writ of assistance to put him in possession, Hagerman v. Heltzel 21 W. 444.**

**Privies to the original parties in the suit, although not named therein are entitled to writ of assistance, id.**

**A purchaser of land at execution sale can not recover from a tenant of the execution debtor in possession under a lease rents paid in advance, Byers v. Rothschild 11 W. 296.**

**Purchaser at foreclosure sale need not account for rents and profits during period between sale and redemption, Hardy v. Herriott 11 W. 460.**

**Purchaser at execution sale being entitled to rents and profits, such sale, though no eviction has occurred, is a breach of warranty and authorizes the commencement of action by a vendee, Frank v. Jenkins 11 W. 611.**



**§7916. Waste Defined and Its Restraint. §14.** Until the expiration of the time allowed for redemption the court may restrain the commission of waste on the property. But it is not waste for the person in possession of the property at the time of the sale or entitled to possession afterwards during the period allowed for redemption to continue to use it in the same manner in which it was previously used, or to use it in the ordinary course of husbandry, or to make the necessary repairs of buildings thereon, or to use wood or timber on the property therefor; or for the repairs of fences, or for fuel in his family, while he occupies the property.

**§7917. When Purchaser Not to Have Possession—Accounting. §15.** The purchaser from the day of sale until a resale or redemption, and the redemptioner from the day of his redemption until another redemption shall be entitled to the possession of the property purchased or redeemed, unless the same be in the possession of a tenant holding under an unexpired lease, and in such case shall be entitled to receive from such tenant the rents or the value of the use and occupation thereof during the period of redemption. Provided That when a mortgage contains a stipulation that in case of foreclosure the mortgagor may remain in possession of the mortgaged premises after sale and until the period of redemption has expired the court shall make its decree to that effect and the mortgagor have such right. Provided further That as to any land so sold which is at the time of the sale used for farming purposes, or which is a part of a farm used at the time of sale for farming purposes the judgment debtor shall be entitled to retain possession thereof during the period of redemption and the purchaser or his successor in interest shall if the judgment debtor do not redeem have a lien upon the crops raised or harvested thereon during the period of such possession for interest on the purchase price at the rate of six per cent. per annum during the period of possession and for any taxes with interest, And provided further That in case of any homestead occupied for that purpose at the time of sale, the judgment debtor shall have the right to retain possession thereof during the period of redemption without accounting for issues or value of occupation.

Purchaser of mortgagor cannot claim homestead, *Skinner v. Hunter* 95 W. 607.

Strictly construed as to part of land possessed during redemption, *Washburn v. Wilen* 96 W. 480.

Purchaser of mortgagor is not "judgment debtor" to claim possession of homestead during redemption, *Northwest Tr. & S. Dep. Co. v. Butcher* 98 W. 158.

Injunction to prevent interference with possession, *Bank of Edwall v. Bateman* 98 W. 447.

Purchaser entitled to condemnation awards not paid, *Damon v. Ryan* 74 W. 138.

Whole title passes to purchaser under a foreclosure sale, including rents and possession, *Merz v. Mehner*, 67 W. 135.

Possession of homestead during redemption valid—covenants of warranty do not defeat—is exemption, *North Pacific L. & T. Co. v. Bennett* 49 W. 34.

Purchaser not taking possession of farming lands is not liable for use, *Kennedy v. Trumble* 32 W. 614.

The provision that a judgment debtor

shall retain possession of homestead during period of redemption without accounting for rents and profits is unconstitutional as to foreclosure sales under mortgages executed prior to its passage, *C. & A. M. & T. Co. v. Blake* 24 W. 102.

Writ of assistance will lie to place assignee of right to redeem in possession—against whom writ will lie, *Hagerman v. Heltzee* 21 W. 444; will not issue against tenant or mortgagor not made party to suit, *State ex rel. Hartman v. Superior Court* 21 W. 469.

Purchaser at execution is entitled to possession against mortgagee of judgment debtor, *State ex rel. Montgomery v. Superior Court* 21 W. 564.

A receiver is not more entitled to writ than any other person, *State ex rel. Baruch v. Moore* 21 W. 628.

Judgment debtor is entitled to possession of farm lands during redemption, *Woodhurst v. Cramer* 29 W. 40.

Tenant in possession under unexpired lease from one who had no interest in the property has no right, *Murray v. Briggs* 29 W. 245.

**§7918. Sheriff's Deed When—Successor May Make. §16.** In all cases where real estate has been, or may hereafter be sold in pursuance of law by virtue of an execution or other process, issued upon an ordinary money judgment, or by virtue of execution, or other process issued upon a decree for the foreclosure of a mortgage or other lien it shall be the duty of the sheriff or other officer making such sale to execute and deliver to the purchaser, or other person entitled to the same a deed of conveyance of the real estate so sold immediately after the time for redemption from such sale has expired: Provided, Such sale has been duly confirmed by order of the court. In case the term of office of the sheriff or other officer making

such sale shall have expired before a sufficient deed has been executed, then the successor in office of such sheriff shall, within the time specified in this act, execute and deliver to the purchaser or other person entitled to the same a deed of the premises so sold, and such deeds shall be as valid and effectual to convey to the grantee the lands or premises so sold, as if the deed had been made by the sheriff or other officer who made the sale.

Grantee evicted may recover of plaintiff,  
§7901.

Equitable title is acquired when money  
is paid whether sale confirmed or not,  
Morrow v. Moran 5 W. 692.

Bill of sale of personalty, §7896.

§7919. **Indorsement of Deed—Auditor's Duty.** §17. The party to whom such sheriff's deed is given shall, upon receipt thereof, take the same to the clerk of the superior court, who shall enter in his book of levies, where the levy is recorded, the sale of real estate therein conveyed, and shall endorse the fact upon the deed, with the date when presented to him and when made. And no county auditor shall record any such deed without such endorsement.

**Supplementary—AN ACT confirming sheriffs' deeds made by the successor in office of sheriffs who have sold land in pursuance of law but have not made deeds therefor.** Approved March 6, 1891. Laws '91 p 178.

§7920. **Sheriffs' Deeds Confirmed.** §1. In all cases where real estate has been heretofore duly sold by a sheriff, in pursuance of law, by virtue of an execution, or other process, and no deed having been made therefor in the manner required by law to the purchaser therefor [thereof] or other person entitled to the same by the sheriff making the sale, the successor in office of the sheriff making the sale, having made a deed of the premises so sold to the purchaser, or other person entitled to the same such deed shall be valid and effectual to convey to the grantee, the lands or premises so sold: Provided. That this act shall not be construed to affect the equities of third parties in the premises.

### EXECUTIONS—STAY.

§7921. **Stay in Supreme and Superior Courts.** §335.—335. Stay of execution shall be allowed on judgments rendered in the supreme court and superior court as follows:

In the supreme court;

1. On all sums under five hundred dollars, thirty days.
2. On all sums over five and under fifteen hundred dollars, sixty days.
3. On all sums over fifteen hundred dollars, ninety days.

On judgments rendered in the superior court:

1. On all sums under three hundred dollars, two months.
2. On all sums over three hundred and under one thousand dollars, five months.
3. On all sums over one thousand dollars, six months.

Insurance company may stay judgment, American Surety Co. v. Fishback 95 W. 124. Supersedeas on appeal, §7296; injunction to stay, §8071; release of errors, §8062.

§7922. **Bond.** §337.—336. Before any execution shall be stayed under the provisions of this act, the defendant shall give bond to the opposite party, in double the amount of the judgment and costs; with surety to the satisfaction of the clerk, conditioned to pay said judgment, interest, costs and increased costs, at the expiration of the period of said stay.

Bond does not prevent appeal, Hampton v. Buchanan 50 W. 39.

§7923. **Judgment and Execution Against Sureties.** §337.—337. If the judgment is not satisfied, at any time after the expiration of the period for which execution has been stayed, the plaintiff, at any subsequent term of the court from which the execution issued, may, upon motion, supported by an affidavit that such judgment or any part thereof is unpaid, and stating how much still remains due thereon, have judgment against the sureties upon said bond, for the balance remaining due, and have an execution therefor upon which no stay shall be allowed.



**§7924 CIVIL PROCEDURE Executions, Supplementary Proceedings §7924**

Judgment against sureties on counter bond in attachment, §7404.

Dismissal of action on bond to stay execution releases surety but not judgment, Slegley v. Nakata 101 W. 73.

**§7924. Sureties to Qualify as in Arrest and Bail. §338.—338.** The sureties upon a bond for stay of execution shall possess the same qualifications, and justify in the same manner, as bail upon arrest in civil actions.

**§7925. Stay After Execution Has Issued. §339.—339.** When execution has not been stayed, and execution issues before the time has elapsed for which it might have been stayed, as is herein provided, the defendant may have stay for the balance of time, upon giving the proper bond and surety, which bond and surety shall be approved by and justified before the sheriff.

**§7926. Bond to Be Filed With Clerk. §340.—340.** Bonds required by this act shall, when taken, be lodged with the clerk of the court where the judgment was rendered, and placed on file in his office.

**EXECUTIONS—SUPPLEMENTARY PROCEEDINGS.**

Substitute—**AN ACT** relating to proceedings supplemental to execution. Approved March 15, 1893. General Repeal. Laws '93 p 435.

**§7927. Order to Examine or Arrest Debtor. §1.** At any time within six years after entry of a judgment for the sum of twenty-five (\$25) dollars or over, and after the return of an execution against property wholly or partially unsatisfied upon proof thereof, by affidavit or other competent written evidence satisfactory to the judge or after the issuing of an execution against property and upon proof by the affidavit of a party or otherwise to the satisfaction of the court or a judge thereof judgment debtor has property which he unjustly refuses to apply towards the satisfaction of the judgment, such court or judge may, by an order, require the judgment debtor to appear at a specified time and place before the judge granting the order, or a referee appointed by him, to answer concerning the same; and the judge to whom application is made under this act may, if it is made to appear to him by the affidavit of the judgment creditor, his agent or attorney that there is danger of the debtor absconding, order the sheriff to arrest the debtor and bring him before the judge granting the order. Upon being brought before the judge he may be ordered to enter into a bond, with sufficient sureties, that he will attend from time to time before the judge or referee, as shall be directed, during the pendency of the proceedings and until the final termination thereof.

Supplementary proceedings in attachment, §7392.

Constitution prohibits imprisonment for debt, Const., Art. 2, §17.

Wife required to appear and money in her possession held to apply on judgment, Breschli v. Kubilus 56 W. 541.

Not necessary to make showing of facts in the record—teacher's salary cannot be reached—Decisions construing former law; 3 W. 366; Flood v. Libby 38 W. 333; 14 W. 177; 11 W. 9; 6 W. 14; 5 W. 772, 804; 17 W. 156; 8 W. 284; 2 W. T. 130, 191.

Return of execution unsatisfied is ground—a sufficient affidavit—defendant

may be ordered to turn over property, Klepsch v. Donald 18 W. 150.

Officers of insolvent corporation in hands of receiver can not be cited, Allen v. Stallcup 13 W. 631.

Proceeding may be had against wife to find husband's property and she may be examined without his consent, Frankenthal v. Solomonson 20 W. 460.

Former statute intended as a kind of creditor's bill, Murne v. Schwabacher 2 W. T. 130.

Equity will not interfere to aid creditor unless he has obtained lien or he can not collect by ordinary process of law, Thompson v. Caton 3 W. T. 31.

**§7928. Warrant May Be vacated. §2.** A warrant issued, as prescribed in the last section, may be vacated or modified by the judge making the same, or by the court out of which the execution was issued, upon giving three days' notice to the opposite party.

**§7929. Third Party to Make Discovery. §3.** Upon proof by affidavit or otherwise, to the satisfaction of the judge, that execution has been issued as prescribed by section one of this act; and also that any person or

corporation has personal property of the judgment debtor of the value of twenty-five dollars or over, or is indebteded to him in said amount, the judge may make an order requiring such person or corporation, or an officer thereof, to appear at a specified time and place before him, or a referee appointed by him, and answer concerning the same.

Garnishment, §7999; answer of debtor er," will be considered an order of reference to a court commissioner, Howard v. corporation, §7945.

An order in supplemental proceedings Hanson, 49 W. 314.  
"to appear before S., court commission-

**§7930. Answer of Third Party—Referee. §4.** An order requiring a person to attend and be examined, made pursuant to any provision of this article, must require him so to attend and be examined, either before the judge to whom the order is returnable or before a referee designated therein. Where the examination is taken before a referee, he must certify to the judge to whom the order is returnable, all of the evidence and other proceedings taken before him.

**§7931. Manner of Answer. §5.** Upon an examination made under this act, the answer of the party or witness examined must be under oath. A corporation must attend by and answer under the oath of an officer thereof, and the judge may, in his discretion, specify the officer. Either party may be examined as a witness in his own behalf, and may produce and examine other witnesses as upon the trial of an action. The judge or referee may adjourn any proceedings under this act from time to time, as he thinks proper.

**§7932. Referee's Oath. §6.** Unless the parties expressly waive the referee's oath, a referee appointed as prescribed in this act must, before entering upon an examination or taking testimony, subscribe and take an oath that he will faithfully and fairly discharge his duty upon the reference, and make a just and true report, according to the best of his understanding. The oath must be returned to the judge with the report of the testimony.

**§7933. Third Party May Pay—Bar. §7.** At any time after the commencement of a special proceeding authorized by this act, and before the appointment of a receiver therein or the extension of a receivership thereto, the judge by whom the order or warrant was granted, or to whom it is made returnable, may in his discretion, upon proof by affidavit to his satisfaction that a person or corporation is indebteded to the judgment debtor, and upon such notice given to such person or corporation as he deems just, or without notice, make an order permitting the person or corporation to pay the sheriff designated in the order a sum on account of the alleged indebtedness not exceeding the sum which will satisfy the execution. A payment thus made is to the extent thereof a discharge of the indebtedness, except as against a transferee from the judgment debtor in good faith, and for a valuable consideration, of whose rights the person or corporation had actual or constructive notice when the payment was made.

**§7934. Third Party and Debtor Ordered to Give Up Property. §8.** Where it appears from the examination or testimony taken in the special proceedings authorized by this act, that the judgment debtor has in his possession or under his control money or other personal property belonging to him, or that one or more articles of personal property capable of manual delivery, his right to the possession whereof is not substantially disputed, are in the possession or under the control of another person, the judge by whom the order or warrant was granted, or to whom it is returnable, may in his discretion, and upon such notice given to such persons as he deems just, or without notice, make an order directing the judgment debtor, or other person, immediately to pay the money or deliver the articles of personal property to a sheriff designated in the order, unless a receiver has been appointed or a receivership has been extended to the special proceedings, and in that case to the receiver.

Includes real property—wife's separate withheld through error as to exemption property set apart, Smith v. Weed 75 W. reversed, Flood v. Libby 38 W. 366.

452. Failure to assert homestead exemption

Receiver not disturbed when property at trial of issue in supplemental proceed-



ings does not bar right, *Field v. Greiner*, property on which he has lien until lien satisfied, *Coombs v. Davis* 2 W. 466.

Garnishee not required to turn over

**§7935. Sheriff's Liability Same as in Executions. §9.** If the sheriff to whom money is paid, or other property is delivered, pursuant to an order made as prescribed in the last section of this act, does not then hold an execution upon the judgment against the property of the judgment debtor, he has the same rights and power, and is subject to the same duties and liabilities, with respect to the money or property, as if the money had been collected or the property had been levied upon by him by virtue of such an execution, except as provided in the next section.

**§7936. Receiver. §10.** After a receiver has been appointed or a receivership has been extended to the special proceedings, the judge must, by order, direct the sheriff to pay the money, or the proceeds of the property, deducting his fees, to the receiver; or if the case so requires, to deliver to the receiver the property in his hands. But if it appears to the satisfaction of the judge, that an order appointing a receiver or extending a receivership is not necessary, he may, by an order reciting that fact, direct the sheriff to apply the money so paid, or the proceeds of the property so delivered, upon an execution in favor of the judgment creditor issued either before or after the payment or delivery to the sheriff.

Notice of application, §7954; of discharge, Cited 75 W. 452.

**§7941.**

**§7937. Proceedings Discontinued or Judgment Paid, Property to Be Returned. §11.** Where money is paid or property is delivered as prescribed in the last four sections and afterwards the special proceeding is discontinued or dismissed, or the judgment is satisfied, without resorting to the money or property; or a balance of the money or of the proceeds of the property or a part of the property remains in the sheriff's or receiver's hands after satisfying the judgment and the costs and expenses of the special proceeding; the judge must make an order directing the sheriff or receiver to pay the money or deliver the property so remaining in his hands to the debtor, or to such other person as appears to be entitled thereto upon payment of his fees and all other sums legally chargeable against the same.

**§7938. Injunction—Bond. §12.** The judge by whom the order or warrant was granted or to whom it is returnable may make an injunction order restraining any person or corporation whether a party or not a party to the special proceeding from making or suffering any transfer or other disposition of, or interference with the property of the judgment debtor, or the property or debt concerning which any person is required to attend and be examined until further direction in the premises. Such an injunction may be made simultaneously with the order or warrant by which the special proceeding is instituted, and upon the same papers or afterwards, upon an affidavit showing sufficient grounds therefor. The judge or court may as a condition of granting an application to vacate or modify the injunction order require the applicant to give security in such sum and in such manner as justice requires.

**§7939. Service of Injunctions and Orders. §13.** An injunction order or an order requiring a person to attend and be examined made as prescribed in this act must be served—

(1) By delivering to the person to be served a certified copy of the original order and a copy of the affidavit on which it was made.

(2) Service upon a corporation is sufficient if made upon an officer to whom a copy of a summons must be delivered where a summons is personally served upon a corporation unless the officer to be served is specially designated in the order, the order may be served by any person who can serve a summons in an action.

**§7940. Debtor Shall Have Copies. §14.** The sheriff, when he arrests a judgment debtor by virtue of a warrant issued as prescribed in this act, must deliver to him a copy of the warrant and of the affidavit upon which it was granted.

**§7941. Creditor's Diligence—Other Creditors May Dismiss—Notice.** §15. A special proceeding instituted as prescribed in this act may be discontinued at any time upon such terms as justice requires, by an order of the judge made upon the application of the judgment creditor. Where the judgment creditor unreasonably delays or neglects to proceed or where it appears that his judgment has been satisfied, his proceedings may be dismissed upon like terms by a like order made upon the application of the judgment debtor, or of plaintiff in a judgment creditor's action against the debtor, or, of a judgment creditor who has instituted either of the special proceeding[s] authorized by this act. Where an order, appointing a receiver or extending a receivership, has been made in the course of the special proceeding notice of the application for an order specified in this section must be given in such manner as the judge deems proper, to all persons interested in the receivership as far as they can conveniently be ascertained.

**§7942. Costs if Property Found.** §16. The judge may make an order allowing to the judgment creditor a fixed sum as costs, consisting of his witness fees and referee's fees and other disbursements, and of a sum in addition thereto not exceeding twenty-five dollars; and directing the payment thereof out of any money which has come or may come to the hands of the receiver or of the sheriff within a time specified in the order.

**§7943. Costs if no Property Found.** §17. Where the judgment debtor or other person against whom the special proceeding is instituted has been examined, and property applicable to the payment of the judgment has not been discovered, the judge may make an order allowing him a like sum as costs, and directing the payment thereof within a time specified in the order by the judgment creditor.

**§7944. Contempt Against Any Order.** §18. A person who refuses, or without sufficient excuse neglects to obey an order of a judge or referee made pursuant to any of the provisions of this act, and duly served upon him, or an oral direction given directly to him by a judge or referee in the course of the special proceeding, or to attend before a judge or referee according to the command of a subpoena duly served upon him, may be punished by the judge of the court out of which the execution issued, as for contempt.

**§7945. Debtor Can Not Be Ordered Out of County.** §19. A judgment debtor who resides or does business in the state, cannot be compelled to attend pursuant to an order made under the provisions of this act, at a place without the county where his residence or place of business is situated. Where the judgment debtor to be examined under this [act] is a corporation, the court may cause such corporation to appear and be examined by making like order or orders as are prescribed in this act, directed to any officer or officers thereof.

**Answer of garnishee corporation, §7929.**

**§7946. Witnesses' Refusal to Give Incriminating Testimony.** §20. A party or witness examined in a special proceeding authorized by this act, is not excused from answering a question on the ground that his examination will tend to convict him of a commission of a fraud, or to prove that he has been a party to or privy to or knowing of a conveyance, assignment, transfer or other disposition of property for any purpose; or that he or another person claims to be entitled as against the judgment creditor or a receiver appointed or to be appointed in the special proceeding, to hold property derived from or through the judgment debtor, or to be discharged from the payment of a debt which was due to the judgment debtor or to a person in his behalf. But an answer cannot be used as evidence against the person so answering in a criminal action or criminal proceeding.

**§7947. Joint Property Liable Though Defendant Was Not Served With Summons.** §21. When, in proceedings under this act, personal service of the summons in the action was not made on all of the defendants, a debt due to, or other personal property owned by, one or more of the defendants not summoned jointly with the defendants summoned, or with any of them, may be reached by proceedings under this act.

**How persons jointly liable bound by judgment, §§8449, 8090.**

**Exemptions generally, §7851.**



**§7948. Continuance Before Another Judge.** §22. A special proceeding under this act instituted before one judge, may be continued from time to time before another judge of the same court, with like effect as if it had been instituted or commenced before the judge who last heard the same.

**§7949. Applies to Justices' Judgments.** §23. This act shall apply to judgments recovered in justice court, upon which a transcript has been issued and filed with the clerk of the superior court.

**§7950. Transcript and Proceedings in any County.** §24. Special proceedings under this act may be instituted and prosecuted before the superior court of the county in which the judgment was entered or any judge thereof, or before the superior court of any county to the sheriff of which an execution has been issued or in which a transcript of said judgment has been filed in the office of the clerk of said court or before any judge thereof. L. '99 146.

**§7951. Exemptions.** §25. This act does not authorize the seizure of or other interference with any property which is expressly exempt by law from levy and sale by virtue of an execution, or any money, thing in action or other property held in trust for a judgment debtor where the trust has been created by or the fund so held in trust has proceeded from a person other than the judgment debtor; or the earnings of the judgment debtor for his personal services rendered within sixty days next before the institution of the special proceeding, where it is made to appear by his oath or otherwise that those earnings are necessary for the use of a family, wholly or partly supported by his labor. Exemption in garnishment, §8022.

**§7952. Fees of Referee.** §27. The fees of referees appointed in proceedings under this act shall be five dollars per day.

Reasons for taking presumed to exist until contrary shown, *Heinzerling v. Agen* 49 W. 647.

**§7953. Receiver—When With or Without Notice.** §28. At any time after making an order requiring the judgment debtor or any other person to attend and be examined, or the issuing of a warrant, as prescribed in this act, the judge to whom the order or warrant is returnable, or the court out of which the order was issued, may make an order appointing a receiver of the property of the judgment debtor. At least two days' notice of the application for the order appointing a receiver must be given personally to the judgment debtor, unless the judge or court is satisfied that he cannot, with reasonable diligence, be found within the state, in which case the order must recite that fact and may dispense with the notice, or may direct notice to be given in any manner which the judge thinks proper. But where the order to attend and be examined, or the warrant has been served upon the judgment debtor, a receiver may be appointed upon the return day thereof, or at the close of the examination, without further notice to him.

Court has broad discretion in appointment of receiver, *Smith v. Weed* 75 W. 452.

**§7954. Trial Without Jury.** §26. Proceedings under this act are special proceedings, and shall be heard by the judge or referee before whom the same are returnable without a jury.

**§7955. Receiver—Notice to Other Supplementing Creditors.** §29. The judge must ascertain, if practicable, by the oath of the judgment debtor or otherwise, whether any other special proceeding authorized by this act is pending against the judgment debtor, or if a receiver has been appointed or application has been made for the appointment of a receiver of the property of the judgment debtor in any other action by a judgment creditor. If either is pending, and a receiver has not been appointed therein, notice of the application for the appointment of a receiver, and of all of the subsequent proceedings respecting the receivership, must be given in such manner as the judge directs to the judgment creditor prosecuting it.

**§7956. Receiver—Only One to Be Appointed.** §30. Only one receiver of the property of the judgment debtor shall be appointed. Where a receiver thereof has already been appointed, the judge, instead of making the order

prescribed in the last section must make an order extending the receivership to the special proceedings before him. Such an order gives to the judgment creditor the same rights as if a receiver was appointed upon his application, including the right to apply to the court to control, direct or remove the receiver or to subordinate the proceedings in or by which the receiver was appointed to those taken under his judgment.

**§7957. Receiver.—Where Order Appointing to Be Filed.** §31. An order appointing a receiver or extending a receivership must be filed in the office of the county clerk wherein the judgment roll in the action is filed; or if the special proceeding is founded upon an execution issued out of a court other than that in which the judgment was rendered, in the office of the clerk of the county wherein the transcript of the judgment is filed.

**§7958. Receivership is Equitable Execution—Filing Order in Another County Holds Personalty Without Levy.** §32. The property of the judgment debtor is vested in a receiver, who has duly qualified, from the time of filing the order appointing him or extending his receivership, as the case may be, subject to the following exceptions:

1. Real property is vested in the receiver, only from the time when the order, or a certified copy thereof, as the case may be, is filed with the auditor of the county where it is situated.

2. When the judgment debtor, at the time when the order is filed, resides in another county of the state, his personal property is vested in the receiver only from the time when a copy of the order, certified by the auditor in whose office it is recorded, is filed with the auditor of the county where he resides.

Cited 75 W. 452.

**§7959. Receivers' Title Extends Back—Innocent Purchasers.** §33. Where the receiver's title to personal property has become vested, as prescribed in the last section, it also extends back by relation, for the benefit of the judgment creditor, in whose behalf the special proceeding was instituted, as follows:

1. When an order requiring the judgment debtor to attend and be examined, or a warrant requiring the sheriff to arrest him and bring him before the judge, has been served, before the appointment of the receiver or the extension of the receivership, the receiver's title extends back so as to include the personal property of the judgment debtor at the time of the service of the order or warrant.

2. Where an order or warrant has not been served as specified in the foregoing subdivision, but an order has been made requiring a person to attend and be examined concerning property belonging or a debt due to the judgment debtor, the receiver's title extends to the personal property belonging to the judgment debtor, which was in the hands or under the control of the person or corporation thus required to attend, at the time of the service of the order, and to a debt then due to him from that person or corporation.

3. In every other case where notice of application for the appointment of a receiver was given to the judgment debtor, the receiver's title extends to the personal property of the judgment debtor at the time when the notice was served, either personally or by complying with the requirements of an order prescribing a substitute for personal service.

4. Where the case is within two or more of the foregoing subdivisions of this section, the rule most favorable to the judgment creditor must be adopted. But this section does not affect the title of a purchaser in good faith without notice, and for a valuable consideration; or the payment of a debt in good faith and without notice.

Personalty held by seizure, §§8121, 7839; but see §7958. 1

**§7960. Receivers, Clerk Shall Keep Book of Orders Appointing—Certifications.** §34. Each county clerk must keep in his office a book indexed to the names of the judgment debtors, styled "book of orders appointing receivers of judgment debtors." A county clerk, in whose office an order or a certified copy of an order is filed, as prescribed in this act must immediately note thereupon the time of filing it, and as soon as practicable must record



it in the book so kept by him. He must also, upon request, furnish forthwith to any party or person interested one or more certified copies thereof. For each omission to comply with any provision of this section, a county clerk forfeits to the party aggrieved two hundred and fifty dollars, in addition to all damages sustained by reason of the omission.

### EXECUTORS' ACTIONS.

**§7961. Executor May Sue Executor. §718.—718.** All other causes of action by one person against another, whether arising on contract or otherwise survive to the personal representatives of the former and against the personal representatives of the latter. Where the cause of action survives as herein provided, the executors or administrators may maintain an action at law thereon against the party against whom the cause of action accrued, or after his death against his personal representatives.

Set-off by and against executors, §8355.

Costs chargeable against estate or executor for mismanagement, §7470.

Defendant may set off claim against decedent, §8355.

Summary judgment against estate on supersedeas bond on appeal, *Olson v. Sel-dovia Salmon Co.* 89 W. 547.

Action for wrongful death survives only against wrongdoer, *Rinker v. Hurd*, 69 W. 257.

Relates only to actions that survive, *Jones v. Miller* 35 W. 499.

Death of surety or joint debtor before

principal will not discharge estate, *Don-nerberg v. Oppenheimer* 15 W. 290; *Mc-Grath v. Gilmore* 15 W. 559.

Personal torts do not survive—inter-pretation of act, *Slauson v. Schwabacher Bros.*, 4 W. 783.

In action for appropriation of property against son of deceased, brother may tes-tify—collection of debts by unauthorized person, *McCoy v. Ayers*, 2 W. T. 307.

Death pending appeal does not abate action, *Wright v. Nor. Pac. Ry.*, 45 W. 432.

**§7962. Two or More Executors as One Party. §719.—719.** In an ac-tion against several executors or administrators, they shall all be consid-ered as one person representing their testator or intestate, and judgment may be given and execution issued against all of them who are defendants in the action, although the notice be served only on part of them in the same manner and with like effect as if served on all, except as provided in the next section.

**§7963. Complaint Must Allege Assets. §720.—720.** When a judg-ment is given against an executor or administrator for want of answer, such judgment is not to be deemed evidence of assets in his hands, unless it appear that the complaint alleged assets and that the notice was served upon him.

**§7964. Inventory Not Exclusive Evidence. §721.—721.** In an action against executors and administrators, in which the fact of their having ad-ministered the estate of their testator or intestate, or any part thereof, is put in issue and the inventory of the property of the deceased returned by them is given in evidence, the same may be contradicted or avoided by evi-dence:

1. That any property has been omitted in such inventory or was not returned therein at its full value, or that since the return thereof such prop-erty has increased in value.

2. That such property has perished or been lost without the fault of such executors or administrators, or that is [it] has been fairly and duly sold by them at a less price than the value so returned, or that since the return of the inventory such property has deteriorated in value. In such action the defendants cannot be charged for any things in action specified in their inventory, unless it appear that they have been collected or with due diligence might have been.

**§7965. Liability of Executor de son tort. §722.—722.** No person is liable to an action as executor of his own wrong for having taken, received or interfered with the property of a deceased person, but is responsible to the executors or administrators of such deceased person for the value of all prop-erty so taken or received, and for all injury caused by his interference with the estate of the deceased.

Where husband's executors take possession of wife's estate left unadministered by the husband the administration is irregular but not void and they do not incur liability of executors de son tort. In Hill's Estate 6 W. 285.

§7966. **Executor of Executor Has No Rights As Such.** §723.—723. An executor of an executor has no authority as such to commence or maintain an action or proceeding relating to the estate of the testator of the first executor, or to take any charge or control thereof.

§7967. **Certain Remedies Against Deceased Not Allowed Against Executors.** §724.—724. In an action against an executor or administrator as such, the remedies of arrest and attachment shall not be allowed on account of the acts of his testator or intestate, but for his own acts as such executor or administrator, such remedies shall be allowed for the same causes in the manner and with like effect as in actions at law generally.

## FORCIBLE ENTRY AND DETAINER.

Criminal code §8858.

Landlord and tenant §3553.

**AN ACT** defining forcible entry, forcible detainer and unlawful detainer of real property, and providing remedies therefor by summary proceedings. Approved March 7, 1891. Repeal of Laws '90 p 73, and all code provisions saving criminal laws, vested rights and proceedings. Laws '91 p 179.

FORMER LAWS, '89-90 p 73; '91 p 78.

§7968. **Forcible Entry Defined.** §1. Every person is guilty of a forcible entry who either—

1. By breaking open windows, doors or other parts of a house, or by fraud, intimidation or stealth, or by any kind of violence, or circumstance of terror enters upon or into any real property; or—

2. Who, after entering peaceably upon real property, turns out by force, threats or menacing conduct the party in actual possession.

Criminal action, §8858.

Landlord and tenant, §3553.

Relation of landlord and tenant must exist to invoke action—tenancy by sufferance—title can not be tried, Meyer v. Berger 43 W. 368.

Title of plaintiff cannot be tried, Monroe v. Stayt 57 W. 592.

Wife occupying leased premises is estopped denying validity of lease, Monroe v. Stayt 57 W. 592.

Offsets, etc., lease void for fraud not defenses—surrender of premises to third party does not change action, Hutchinson v. Wilson 54 W. 410.

The party in possession must have verdict regardless of title, Fowler v. Obnick 45 W. 44.

This act is due process of law and constitutional, State ex rel. German etc. Soc. v. Prather 19 W. 336, Morris v. Healy Lumber Co. 33 W. 451.

This act applies to prior contracts though penalties increased, Woodward v. Winehill 14 W. 394.

This is summary action and all the usual defenses in action are not allowed, Phillips v. Port Townsend Lodge 8 W. 529; Owen v. Stanton 25 W. 112; Carmack v. Drum 27 W. 382. Two actions may be had on same contract and one will not abate the other, Carmack v. Drum, id.

Surrender of lease not required to be in writing and such surrender may be made to the reversioner or his agent, Hart v. Pratt 19 W. 560.

Lessor may maintain action though receiver in mortgage foreclosure against the lessee has been appointed and he is a party, Woodward v. Winehill 14 W. 394.

Notice to receiver is not necessary if lessee was notified before receiver appointed, id.

Receiver does not represent lessor, id.

Succeeding lessee may maintain action, Harris v. Halverson 23 W. 779.

Party in peaceable possession may defend such possession even against owner, White v. Territory 3 W. T. 397.

§7969. **Forcible Detainer Defined.** §2. Every person is guilty of a forcible detainer who either—

1. By force, or by menaces and threats of violence, unlawfully holds and keeps the possession of any real property, whether the same was acquired peaceably or otherwise; or—

2. Who in the night time or during the absence of the occupant of any real property, enters thereon, and who, after demand made for the surrender thereof, refuses for the period of three days to surrender the same to such former occupant. The occupant of real property within the meaning of this subdivision, is one who, for the five days next preceding such unlawful entry, was in the peaceable and undisturbed possession of such real property.



Entry by stealth and forcible detainer of U. S. lands in peaceable possession of another gives no right, *Denee v. Ankeny* 246 U. S. 208.

Lessor reserving rights held guilty of forcible entry and detainer, *Hayes v. Osborn* 96 W. 343.

Right as homesteader is not defense, *Ridpath v. Denee* 85 W. 322.

One must be "occupant" to maintain action, *Chezum v. Campbell* 42 W. 560.

Complaint held sufficient—facts to be found, *Gore v. Altice* 33 W. 335.

**§7970. Unlawful Detainer Defined.** §3. A tenant of real property for a term less than life is guilty of unlawful detainer either (1) when he holds over or continues in possession, in person or by subtenant, of the property or any part thereof after the expiration of the term for which it is let to him. In all cases where real property is leased for a specified term or period by express or implied contract, whether written or by parole, the tenancy shall be terminated without notice at the expiration of such specified term or period; (2) when he having leased real property for an indefinite time, with monthly or other periodic rent reserved, continues in possession thereof, in person or by subtenant, after the end of any such month or period, in cases where the landlord, more than twenty days prior to the end of such month or period, shall have served notice (in manner in this act provided) requiring him to quit the premises at the expiration of such month or period. (3) When he continues in possession in person or by subtenant after a default in the payment of any rent, and after notice in writing requiring in the alternative the payment of the rent or the surrender of the detained premises, served (in manner hereafter in this act provided) in behalf of the person entitled to the rent upon the person owning the same, shall have remained uncomplied with for the period of three days after service thereof. Such notice may be served at any time after the rent becomes due; or (4) when he continues in possession in person or by subtenant after a neglect or failure to keep or perform any other condition or covenant of the lease or agreement under which the property is held, including any covenant not to assign or sub-let, than one for the payment of rent, and after notice in writing requiring .....in the alternative the performance of such condition or covenant or the surrender of the property, served (in the manner provided in this act) upon him, and if there be a sub-tenant in actual possession of the premises, also upon such sub-tenant, shall remain uncomplied with for ten days after service thereof. Within ten days after the service of such notice the tenant, or any sub-tenant in actual occupation of the premises, or any mortgagee of the term, or other person interested in its continuance, may perform such condition or covenant and thereby save the lease from such forfeiture; or (5) when he commits or permits waste upon the demised premises, or when he sets up or carries on therein or thereon any unlawful business, or when he erects, suffers, permits or maintains on or about said premises any nuisance, and remains in possession after service (in manner in this act provided) of three days notice to quit upon him. (6) Any person who shall, without the permission of the owner and without having any color of title thereto, enter upon the land of another, and who shall fail or refuse to remove therefrom after three days notice, in writing, to be served in the manner provided in this act. L. '05 173.

Demand and notice to quit not dispensed with by clause in lease providing for termination of lease at lessor's option, *Jeffries v. Spencer* 86 W. 133.

Twenty day notice required, *Corner Market Co. v. Gillman* 77 W. 625.

Failure to pay taxes is unlawful detainer, *Olson Land Co. v. Alki Park Co.*, 63 W. 521.

Clause 2 has no application to clause 3—signature to notice in firm name, *Bowman v. Harrison* 59 W. 56.

Lessee maintained a nuisance held that landlord properly terminated lease and brought action, *Redpath v. Spokane Stamp Works* 48 W. 329; injunction against lessor is error, *id* 370.

Tenant may plead agreement of landlord to repair and payment of rent less repairs, *Tipton v. Roberts* 48 W. 391.

Action against original lessee for de-

fault of rent by his subtenant—sub'etting not assignment—taxes, *Agen v. Nelson* 51 W. 431.

"Owner" means person entitled to possession, *Stahl Brg Co. v. Van Buren* 45 W. 451.

L. '05 173 different than original act—election of remedy—ejectment as former remedy—plaintiff's showing, *Columbia etc. Co. v. Moss* 44 W. 590.

Notice terminating tenancy at end of month served 20 days prior thereto sufficient—tender of rent, *Newman v. Worthen* 57 W. 467.

Service by mail begins when notice is received, *Smith v. Seattle Camp W. O. W.* 57 W. 556.

Validity of sublease—evidence—owner's recognition—remedy, *Teater v. King* 35 W. 138.

Lease of farm with numerous conditions—notice to quit for default—nonpayment of rent—waste, *Byrkett v. Gardner* 35 W. 668.

Title decreed to plaintiff after tenant had entered by authority of another, held plaintiff entitled to rent—continuing rent recovered by supplemental complaint, *State v. Pittinger* 37 W. 384.

Notice not necessary where lease is for definite term—condemnation proceedings instituted do not justify holding over, *Morris v. Healy Lumber Co.* 33 W. 451.

Continuance after term expires is unlawful detainer—notice not necessary, *Stanford Land Co. v. Steidle* 28 W. 72.

Notice must be given to tenant though he disputes landlord's title, *Lowman v.*

*West* 8 W. 355.

Either landlord or second lessee may maintain action, *Capital Br'g Co. v. Crosbie* 22 W. 269; *Schreiner v. Stanton* 26 W. 563.

Acceptance of rent may not be ratification of lease, *Ovens v. Stanton* 25 W. 112.

Assignment of parol lease for indefinite time with consent of lessor that assignee could take as long as rent was paid and straight house kept creates tenancy from month to month, *Schreiner v. Stanton* 26 W. 563.

Twenty day notice sufficient, *McGinnis v. Genss* 25 W. 490; *Ferguson v. Hoshi*, id 664; *Yesler Estate v. Orth* 24 W. 483.

Notice signed by one of several executors is sufficient, *Gilmore v. Baker & Co.* 12 W. 468.

**§7971. Holding Over Continues Tenancy of Agricultural Lands. §4.** In all cases of tenancy upon agricultural lands, where the tenant has held over and retained possession for more than sixty days after the expiration of his term without any demand or notice to quit by his landlord, or the successor in estate of his landlord, if any there be, he shall be deemed to be holding by permission of his landlord, or the successor in estate of his landlord, if any there be, and shall be entitled to hold under the terms of the lease for another full year, and shall not be guilty of an unlawful detainer during said year, and such holding over for the period aforesaid shall be taken and construed as a consent on the part of a tenant to hold for another year.

Oral notice prevents renewal of agricultural lease by holding over, *Smetzer v. Webb* 101 W. 568.

Holding over agricultural lands for 60 days continues tenancy, *Spreitzer v. Miller* 98 W. 601.

Tenant under void lease holds over and is entitled to crops though he has sought

to compel conveyance, *Snyder v. Harding* 38 W. 666.

This section construed with the preceding one makes tenant holding over guilty of unlawful detainer for sixty days, after which time he will be entitled to hold over as provided by this section—notice, *Mounts v. Goranson* 29 W. 262

**§7972. Manner of Service—Proof. §5.** Any notice provided for in this act shall be served either (1) by delivering a copy personally to the person entitled thereto; or (2) if he be absent from the premises unlawfully held, by leaving there a copy, with some person of suitable age and discretion, and sending a copy through the mail addressed to the person entitled thereto at his place of residence; or (3) if the person to be notified be a tenant, or an unlawful holder of premises, and his place of residence is not known, or if a person of suitable age and discretion there cannot be found then by affixing a copy of the notice in a conspicuous place on the premises unlawfully held, and also delivering a copy to a person there residing, if such a person can be found, and also sending a copy through the mail addressed to the tenant, or unlawful occupant, at the place where the premises unlawfully held are situated. Service upon a sub-tenant may be made in the same manner: Provided, That in cases where the tenant or unlawful occupant, shall be conducting a hotel, inn, lodging house, boarding house, or shall be renting rooms while still retaining control of the premises as a whole, that the guests, lodgers, boarders or persons renting such rooms shall not be considered as sub-tenants within the meaning of this act, but all such persons may be served by affixing a copy of the notice to be served in two conspicuous places upon the premises unlawfully held; and such persons shall not be necessary parties defendant in an action to recover possession of said premises. Service of any notice provided for in this act may be had upon a corporation by delivering a copy thereof to any officer, agent or person having charge of the business of such corporation, at the premises unlawfully held, and in case no such officer, agent or person can be found upon such premises, then service may be had by affixing a copy of such notice in a conspicuous place upon said premises and by sending a copy through the mail addressed to such corporation at the place where said premises are situated. Proof of any service under this section may be made by the affidavit of the person making the same in like manner and with like effect as the proof of service of summons in civil



actions. When a copy of notice is sent though the mail, as provided in this section, service shall be deemed complete when such copy is deposited in the United States mail in the county in which the property is situated properly addressed with postage prepaid: Provided, however, That when service is made by mail one additional day shall be allowed before the commencement of an action based upon such notice. L. '11 95; '05 173.

Affixing copy to door and mailing sufficient, Hutchinson Inv. Co. v. Womans Exchange 95 W. 605.

Clerk signed agent's and owner's names to notice, held sufficient, Bond v. Chapman 34 W. 606.

Rent for one month paid on November

23, notice to quit on December 23 served on December 2nd is good, Teater v. King 35 W. 138.

Notice to quit on next day after tenancy expires is good, Harris v. Halverson 23 W. 779.

§7973. **Venue of Action.** §6. The superior court of the county in which the property or some part of it is situated, shall have jurisdiction of proceedings under this act.

§7974. **Party Defendant Is Person in Possession—Action Shall Not Fail.** §7. No person other than the tenant of the premises and sub-tenant, if there be one, in the actual occupation of the premises when the complaint is filed, need be made parties defendant in any proceeding under this act, nor shall any proceeding abate, nor the plaintiff be non-suited, for the non-rejoinder of any person who might have been made party defendant; but when it appears that any of the parties served with process, or appearing in the proceeding, are guilty of the offense charged, judgment must be rendered against him. In case a person has become a sub-tenant of the premises in controversy after the service of any notice in this act provided for, the fact that such notice was not served on such sub-tenant, shall constitute no defense to the action. All persons who enter the premises under the tenant, after the commencement of the action hereunder, shall be bound by the judgment, the same as if they had been made parties to the action.

Lienor of tenant is not necessary party, Canyon Lum. Co. v. Sexton 93 W. 620.

Filing of lis pendens, §8452.

§7975. **Contents of Complaint—Summons—Publication.** §8. The plaintiff, in his complaint, which shall be in writing, must set forth the facts on which he seeks to recover, and describe the premises with reasonable certainty, and may set forth therein any circumstances of fraud, force or violence, which may have accompanied the said forcible entry or forcible or unlawful detainer, and claim damages therefor, or compensation for the occupation of the premises or both; in case the unlawful detainer charged be after default in the payment of rent, the complaint must state the amount of such rent. Upon filing the complaint a summons must be issued thereon as in other cases, returnable at a day designated therein, which shall not be less than six or more than twelve days from its date, except in cases where the publication of summons is necessary, in which case the court or judge thereof may order that the summons be made returnable at such time as may be deemed proper, and the summons shall specify the return day so fixed.

Complaint cannot be amended and injunctive relief granted, State ex Seaborn v. Court 102 W. 215.

Return date is from date of service, Morris v. Healy Lumber Co. 33 W. 451.

A general description of premises held good, Stanford Land Co. v. Steidle 28 W. 72.

Failure of complaint to plead lease and facts showing right of possession cured by exhibit of notice to quit, Quandt v. Smith 28 W. 664.

Summons as provided by law at the time action is brought, Security Sav'gs & T. Co. v. Hackett 27 W. 247; State ex rel. Smith v. Parker 12 W. 685.

Procedure being special is not modified by later general act, State ex rel. Smith v. Parker, 12 W. 685.

Complaint alleging conclusions held insufficient, Lowman v. West 8 W. 355; but see Harris v. Halverson 23 W. 779.

Tenant against sub-tenant alleges that he is lessee, Harris v. Halverson 23 W. 779.

Former law construed 1 W. 135.

§7976. **Contents of Summons—Publication—Alias Summons.** §9. The summons must state the names of the parties to the proceeding, the court in which the same is brought, the nature of the action in concise terms, and the relief sought, and also the return day; and must notify the defendant

to appear and answer within the time designated or that the relief sought will be taken against him. The summons must be directed to the defendant, and, in case of summons by publication, be served at least five days before the return day designated therein. The summons must be served and returned in the same manner as summons in other actions is served and returned. Upon the return of any summons issued under this act, when the same has not for any reason been served, or has not been served in time, the plaintiff may have a new summons issued the same as if no previous summons had been issued.

Service and return of summons, §8438.

Summons not stating nature of action —cannot be cured, *Big Bend Land Co. v. Huston* 98 W. 640.  
nor relief demanded nor return day is void

**§7977. Writ of Restitution—Bond.** §10. The plaintiff, at the time of commencing an action of forcible entry, or forcible detainer or unlawful detainer, or at any time afterwards, may apply to the judge of the court in which the action is pending, for a writ of restitution restoring to the plaintiff the property in the complaint described, and the judge shall order a writ of restitution to issue. The writ shall be issued by the clerk of the superior court in which the action is pending, and be returnable in twenty days after its date, but before any writ shall issue prior to judgment, the plaintiff shall execute to the defendant and file in court a bond in such a sum as the court or judge shall order, with two or more sureties, to be approved by the clerk, conditioned that the plaintiff will prosecute his action without delay and will pay all costs that may be adjudged to the defendant, and all damages which he may sustain by reason of the writ of restitution having been issued should the same be wrongfully sued out.

Writ in force after return day, *State ex Sound R. Co. v. Moss* 53 W. 512.  
*Barnes v. Court* 96 W. 581. Restitution is due process of law since it is only temporary, *State ex rel. German*

Restitution improvidently made by writ It is only temporary, *State ex rel. German*  
party restored when, *Columbia & Puget Savings etc. Society v. Prather* 19 W. 336.

**§7978. Service of Writ—Counter Bond.** §11. The Sheriff shall, upon receiving the writ of restitution, forthwith serve a copy thereof upon the defendant, his agent or attorney, or a person in possession of the premises, and shall not execute the same for three days thereafter, within which time the defendant, or those in possession of the premises, may execute to the plaintiff a bond to be filed with and approved by the clerk of the court in such sum as may be fixed by the judge, with two or more sureties to be approved by the clerk of said court, conditioned that they will pay to the plaintiff such sum as the plaintiff may recover for the use and occupation of the said premises, or any rent found due, together with all damages the plaintiff may sustain by reason of the defendant occupying or keeping possession of said premises, and also all the costs of the action. The plaintiff, his agent or attorneys, shall have notice of the time and place where the court or judge thereof shall fix the amount of the defendant's bond, and shall have notice and a reasonable opportunity to examine into the qualification and sufficiency of the sureties upon said bond before said bond shall be approved by the clerk. The writ may be served by the sheriff, in the event he shall be unable to find the defendant, an agent or attorney, or a person in possession of the demised premises, by affixing a copy of said writ in a conspicuous place upon the demised premises. L. '05 173.

Surety on redelivery bond is bound by judgment for plaintiff, *Morrison v. Fidelity & Dep. Co.* 97 W. 623.

Bond by one surety for "subsequent" rents, insufficient—bond stricken, *State ex Barnes v. Court* 96 W. 581.

Surety bond liable under this section, *Glover v. Fidelity & Dep. Co.* 75 W. 606.

Counter restitution bond is not superseded by stay bond on appeal—amendment of complaint or giving of second bond will not release sureties, *Lowman v. West* 18 W. 233.

**§7979. Bond, Change of—Additional Bond.** §12. The plaintiff or defendant at any time, upon two days' notice to the adverse party, may apply to the court or any judge thereof for an order raising or lowering the amount of any bond in this act provided for. Either party may, upon like notice, apply to the court or any judge thereof for an order requiring additional or other surety or sureties upon any such bond. Upon the hearing or any application made under the provisions of this section evidence may be given. The judge after hearing any such application shall make such an order as shall be just in the premises. The bondsmen may be required to be present at such hearing if so required in the notice thereof, and shall answer under



oath all questions that may be asked them touching their qualifications as bondsmen, and in the event the bondsmen shall fail or refuse to appear at such hearing and so answer such questions the bond shall be stricken. In the event the court shall order a new or additional bond to be furnished by defendant, and the same shall not be given within twenty-four hours, the court shall order the sheriff to forthwith execute the writ. In the event the defendant shall file a second or additional bond and it shall also be found insufficient after hearing, as above provided, the right to retain the premises by bond shall be lost and the sheriff shall forthwith put the plaintiff in possession of the premises. L. '05 173.

**§7980. Judgment by Default.** §13. If, at the time appointed in the summons, the defendant do not appear and defend, the court must render judgment in favor of the plaintiff as prayed for in the complaint.

**§7981. Appearance of Defendant.** §14. On or before the day fixed for his appearance, the defendant may appear and answer or demur.

Defendant cannot counterclaim damages for loss of business, etc., in unlawful detainer, *Ralph v. Lomer* 3 W. 401; *Phillips v. Port Townsend Lodge*, 8 W. 529. Plea of tender of rent due insufficient unless it alleges offer to pay interest on rent in arrears, etc., *Ralph v. Lomer*, 3 W. 401. Nor ask reformation of lease to express

**§7982. Cases to Have Precedence.** §15. Whenever an issue of fact is presented by the pleadings, it must be tried by a jury, unless such a jury be waived as in other cases. The jury shall be formed in the same manner as other trial juries in the court in which the action is pending; and in all cases actions under this act shall take precedence of all other civil actions.

**§7983. Plaintiff's Showing on Trial.** §16. On the trial of any proceeding for any forcible entry or forcible detainer, the plaintiff shall only be required to show, in addition to a forcible entry complained of, that he was peaceably in the actual possession at the time of the forcible entry, or, in addition to a forcible detainer complained of, that he was entitled to the possession at the time of the forcible detainer.

Peaceable possession of U. S. lands not to be violated for purpose of establishing homestead claim, *Denee v. Ankeny* 216 U. S. 208.

Equitable defenses not allowed, *Bond v. Chapman* 34 W. 606.

Possession prima facie established by introduction of lease, *Collins v. Hall*, 5

W. 366.

If parties in action for rent rely on express contract, evidence of reasonable value inadmissible, *Gilmore v. Baker Co.*, 12 W. 468.

Title to property cannot be tried, *Meyer v. Beyer*, 43 W. 368.

**§7984. Amendments Without Costs—No Continuance.** §17. When, upon the trial of any proceeding under this act, it appears from the evidence that the defendant has been guilty of either a forcible entry or a forcible or unlawful detainer, in respect of the premises described in the complaint and other than the offense charged in the complaint, the judge must order that such complaint be forthwith amended to conform to such proofs; such amendment must be made without any imposition of terms. No continuance shall be permitted on account of such amendment unless the defendant shows to the satisfaction of the court good cause therefor.

**§7985. Judgment for Restitution, Rent and Damages—Relief from Forfeiture.** §18. If, upon the trial the verdict of the jury, or, if the case be tried without a jury, the finding of the court be in favor of the plaintiff and against the defendant, judgment shall be entered for the restitution of the premises; and if the proceeding be for unlawful detainer after neglect or failure to perform any condition or covenant of a lease or agreement under which the property is held, or after default in the payment of rent, the judgment shall also declare the forfeiture of the lease, agreement or tenancy. The jury, or the court, if the proceeding, be tried without a jury, shall also assess the damages occasioned to the plaintiff by any forcible entry, or by any forcible or unlawful detainer alleged in the complaint and proved on the trial, and, if the alleged unlawful detainer be after default in the payment of rent, find the amount of any rent due, and the judgment shall be rendered against the defendant guilty of the forcible entry, forcible detainer or unlawful detainer for twice the amount of damages thus assessed and of the rent, if any found due. When the proceeding is for an unlawful detainer after default in the payment of rent, and the lease or agreement under which the rent is payable, has not by its terms

expired, execution upon the judgment shall not be issued until the expiration of five days after the entry of the judgment, within which time, the tenant or any sub-tenant, or any mortgagee of the term or other party interested in its continuance, may pay into court for the landlord the amount of the judgment and costs, and thereupon the judgment shall be satisfied and the tenant restored to his estate; but if payment, as herein provided, be not made within five days, the judgment may be enforced for its full amount and for the possession of the premises. In all other cases the judgment may be enforced immediately. If writ of restitution shall have been executed prior to judgment, no further writ or execution for the premises shall be required.

Rent doubled and lessee evicted for failure to make and pay for repairs, *Fisher v. C.* 98 W. 382.

Surety bond liable under this section, *Glover v. Fidelity & Dep. Co.* 75 W. 606.

Upon the unlawful detainer of a house for one month after notice, the landlord is entitled to double rent for one month, and consequential damages, *Shannon v. Loeb.* 63 W. 640.

A clause in a lease stipulating damages for failure to perform covenants, does not relate to damages for unlawful detainer, *O'Connell v. Arai.* 63 W. 280.

Ground rent lessee erecting buildings—reentry by landlord—rent—forfeiture of buildings, *Toellner v. McGinnis* 55 W. 430.

Section applied, *Newman v. Worthen* 57 W. 467.

Judgment against husband alone void, *Gustin v. Crockett* 44 W. 536.

Double damages allowed, *Hinckley v. Casey* 45 W. 430.

Detention after failure to pay rent warrants double damages, *Bond v. Chapman*

34 W. 606.

Judgment for double damages on general verdict is proper, *Quandt v. Smith* 28 W. 664.

Qualified judgment will not defeat tenant's fire insurance, *Brown Nat'l Bank v. Ins. Co.* 22 W. 379.

Judgment of forfeiture is harmless error since tenant may be restored, *Woodward v. Winehill* 14 W. 394.

Double damages must be claimed and proven, *Gaffney v. Megrath* 11 W. 456; *Ferguson v. Hoshi* 24 W. 664; *Hart v. Pratt* 19 W. 560.

Damage for failure to vacate premises is difference between rent reserved and actual rental value, *Engstrom v. Merriam* 25 W. 73.

Without prayer it is error to give judgment for double rent and damages, *Hall & Paulson Furn. Co. v. Wilbur* 4 W. 644.

Though party cannot have restitution because lease expired he may continue for damages, *Cutler v. Co-operative Brotherhood* 31 W. 680.

**§7986. Amendments Before Final Judgment.** §19. Amendments may be allowed by the court at any time before final judgment, upon such terms as to the court may appear just, in the same cases and manner and to the same extent as in civil actions.

Amendments in civil actions generally, §8459.

**§7987. Civil Practice Applies—Appeals.** §20. Except as otherwise provided in this act, the provisions of the laws of this state with reference to practice in civil actions are applicable to, and constitute the rules of practice in the proceedings mentioned in this act; and the provisions of such laws relative to new trials and appeals, except so far as they are inconsistent with the provisions of this act, shall be held to apply to the proceedings mentioned in this act.

Findings, conclusions and judgment held sufficient—judgment reduced because double damages not claimed, *Gaffney v. Megrath* 11 W. 456.

Verdict for defendant will not be disturbed when relation of landlord and tenant not clearly established, *Seattle Operating Co. v. Cavanaugh* 6 W. 325.

**§7988. Relief of Tenant or Interested Party from Forfeiture.** §21. The court may relieve a tenant against a forfeiture of a lease, and restore him to his former estate, as in other cases provided by law, where application for such relief is made within thirty days after the forfeiture is declared by the judgment of the court, as provided in this act. The application may be made by a tenant or sub-tenant, or a mortgagee of the term, or any person interested in the continuance of the term. It must be made upon petition, setting forth the facts upon which the relief is sought, and be verified by the applicant. Notice of the application, with a copy of the petition, must be served on the plaintiff in the judgment who may appear and contest the application. In no case shall the application be granted except on condition that full payment of rent due, or full performance of conditions of covenants stipulated, so far as the same is practicable be first made.



**§7989. Appeal—Stay Bond. §22.** If either party feels aggrieved by the judgment, he may appeal to the supreme court, as in other civil actions: Provided, That if the defendant appealing desires a stay of proceedings pending such appeal, he shall execute and file a bond, with two or more sufficient sureties, to be approved by the judge, conditioned to abide the order of the court on such appeal, and to pay all rents and other damages justly accruing to the plaintiff during the pendency of the appeal.

Bond on appeal, §7296.

Stay suspends restitution though ten-

Obligee in bond may on affirmance re- art's term has expired, State ex rel. Orth cover rents pending appeal, Hinckley v. v Benson 21 W. 580; Northwestern etc Casey 54 W. 34. Bank v. Griffiths 17 W. 98.

**§7990. Effect of Stay. §23.** When the defendant shall appeal, and shall file a bond as provided in the preceding section, all further proceedings in the case shall be stayed until the determination of said appeal, and the same has been remanded to the superior court for further proceedings therein.

Dep. Co. 97 W. 623.

Stay bond on appeal must provide for Remedy if defendant dispossessed, State rent and damages, Morrison v. Fidelity & ex Barnes v. Court 96 W. 581.

**§7991. Id—Defendant to Be Restored. §24.** If a writ of restitution has been issued previous to the taking of an appeal by the defendant, and said defendant shall execute and file a bond as provided in this act, the clerk of the court under the direction of the judge shall forthwith give the appellant a certificate of the allowance of such appeal; and upon the service of such certificate upon the officer having such writ of restitution, the said officer shall forthwith cease all further proceedings by virtue of such writ; and, if such writ has been completely executed, the defendant shall be restored to the possession of the premises, and shall remain in possession thereof until the appeal is determined.

**AN ACT in relation to summary proceedings for obtaining possession of real property in certain cases, and declaring an emergency. Approved March 7, 1891. Laws '91 p 212.**

**§7992. Entry Without Color of Title Is Unlawful Detainer—Notice. §1.** That any person who shall without the permission of the owner, and without having any color of title thereto, enter upon the lands of another, and shall refuse to remove therefrom after three days' notice shall be deemed guilty of unlawful detainer and may be removed from such lands.

Prohibition will not lie to prevent judg- closure to which defendant was not a ment without notice to quit or pay rent, party, held sufficient, McMillan v. Walker State ex Robertson v. Court 95 W. 447. 48 W. 342.

Plaintiff showed title by mortgage fore-

**§7993. Pleadings. §2.** The complaint in all cases under the provisions of the act shall be upon oath and then [there] shall be embodied therein or amended thereto, an abstract of the plaintiff's title, and the defendant shall in his answer state whether he makes any claim of title to the lands described in the complaint and if he makes no claim to the legal title but does claim a right to the possession of such lands he shall state upon what grounds he claims a right to such possession.

Abstract does not mean an abstractor's and deed to plaintiff in evidence will not abstract, Roberts v. Center 26 W. 435. support action, McGraw v. Lamb 31 W. 485

In the absence of abstract of title de- 485 fendant need not answer affirmatively— Is reply required to affirmative answer? actual possession must be alleged—deed Fife v. Olson 5 W. 789. to grantor of plaintiff in fact a mortgage

**§7994. Denial of Right of Possession—Trial. §3.** It shall not be necessary for the plaintiff in proceedings under this act, to allege or prove that the said lands were at any time actually occupied prior to the defendant's entry thereupon, but it shall be sufficient to allege that he is the legal owner and entitled to the immediate possession thereof: Provided That if the defendant shall by his answer deny such ownership and shall state facts showing that he has a lawful claim to the possession thereof, the cause shall thereupon be entered for trial upon the docket of the court in all respects as if the action were brought under the provisions of chapter XLVI of the code of eighteen hundred and eighty-one

**§7995. Several Persons on One Parcel May Be Made Defendants—Trial.** §4. All persons in actual possession of any portion of the several subdivisions of any section of land according to the government surveys thereof may be made defendants in one action: Provided. That they may in their discretion make separate answers to the complaint, and if separate issues are joined thereupon, the same shall nevertheless be tried as one action, but the verdict, if tried by jury, shall find separately upon the issues so joined and judgment shall be rendered according thereto.

**§7996. Rules of Mining Districts to Prevail.** §1884.—196. In an action to recover possession of a mining claim, proof shall be admitted of the customs, usages or regulations established and in force at the bar or diggings embracing such claim; and such customs, and regulations, when not in conflict, with the laws of the United States, or this State, shall govern the decision of the action.

## FOREIGN JUDGMENTS.

**Amendatory—AN ACT in relation to the effect of judgments of other states and territories, and amending Section 739 of the Code of Washington.** Approved February 25, 1891. Laws '91 p 70.

**§7997. Manner of Service Affects Foreign Judgment.** §739. Judgment for debt rendered in any other state or any territory against any person or persons residents of this state at the time of the rendition of such judgment shall not be of any higher character as evidence of indebtedness than the original claim or demand upon which such judgment is rendered, unless such judgment shall be rendered upon personal service of summons, notice or other due process against the defendant therein. L. '91 70.

Foreign judgment on judgment note valid—judicial notice of laws of other states, 9 W. 68.

Miller v. Miller 90 W. 333. Defense of insanity is available, Townsend v. Price 19 W. 415.

Publication in foreclosure cases good, Clark v. Eltinge 38 W. 376. Service on defendant can be shown only by judgment roll—service on agent of

Recitals of foreign judgment may be denied, Aultman Miller & Co. v. Mills 18 W. 524. foreign corporation, Cunningham v. Spokane Hydraulic Co. 18 W. 524.

**§7998. Defenses in Absence of Personal Service.** §740.—740. The same defense to suits on judgments rendered without such personal service may be made by the judgment debtor, which might have been set up in the original proceeding.

## GARNISHMENT.

Bill of lading issued writ will not lie §451.

**Supplementary—AN ACT in relation to garnishments.** Approved March 8, 1893. General Repeal. Laws '93 p 95.

**§7999. When Garnishment May Issue.** §1. The clerks of the superior courts in the various counties in the state may issue writs of garnishment returnable to their respective courts, in the following cases:

1. Where an original attachment has been issued in accordance with the statutes in relation to attachments.

2. Where the plaintiff sues for a debt and makes affidavit that such debt is just, due and unpaid, and that the garnishment applied for is not sued out to injure either the defendant or the garnishee.

3. Where the plaintiff has a judgment wholly or partially unsatisfied in the court from which he seeks to have a writ of garnishment issued.

Garnishment acts reviewed—character of action defined, Morris & Co. v. Canadian Bank, etc. 95 W. 418. cause to federal court, Baker v. Duwamish Mill Co. 149 Fed. 612

Attachment of fund in court, §7397.

Assignment to defeat garnishment found fraudulent on slight evidence, Bausman v. Cameron 26 W. 352.

Execution, supplementary proceedings, §7927.

A county cannot be garnished if claim has not been presented, Eureka Sandstone Co. v. Pierce County 8 W. 236.

Officers and fiduciaries liable, §7396.

Justice's procedure, §9530.

Non-resident garnishee may remove

Municipal corporations are not liable to



garnishment, State ex rel. Summerfield v. Tyler 14 W. 495.

Funds of city deposited in name of officer is not subject to garnishment nor can city be ordered to intervene, Marx v. Parker 9 W. 473.

Writ against defendant will not hold money deposited for defendant by another as bail, McAlmond v. Bevington 23 W. 315.

Intervention by debtor in garnishment in effect a proceeding to quash does not require jury trial, Gaffney v. Megrath 23 W. 476.

Money deposited in court by third party such party taking judgment as security, when judgment vacated money is not subject to garnishment, Merwin v. Fowler 20 W. 587.

Garnishment will lie in foreclosure of mortgage against foreign insolvent corporation, Prussian Ins. Co. v. Northwest Etc. Insurance Co. 19 W. 281.

Property leased cannot be garnished, Drake v. Catlin 18 W. 316.

Joint debt may be reached by garnishment, Moore v. Gilmore 16 W. 123.

Foreign corporation having agent is subject to garnishment, Dittenhoefer v. Cloth-

ing Co. 4 W. 519.

Garnishment of funds in hands of owner of building is prior to claim of creditor against lienor, Alexander v. Hemrich 4 W. 727.

Garnishment of foreign corporation in another state of debt due citizen of this state is defense Neufelder v. German Am. Ins. Co. 6 W. 336.

Court cannot order third party into court though it appear that such person a necessary party, State ex rel. Nolte v. Superior Court 15 W. 500.

Garnishee must advise court of assignment or he will be bound to pay assignee, Bellingham Bay Boom Co. v. Brisbois 14 W. 173.

Checks are not an assignment of funds against garnishment, Commercial Bank v. Chilberg 14 W. 247.

Garnishee cannot relieve himself of liability to deposit of funds unless done in the manner provided for disclaiming interest, Ward v. Ward 14 W. 640.

Garnishment in aid of execution under former law failed to hold notes against Federal jurisdiction, Chase v. Cannon 47 Fed. Rep. 674.

**§8000. Bond in What Cases. §2.** In the case mentioned in subdivision two of the preceding section, the plaintiff shall execute a bond with two or more good and sufficient sureties, to be approved by the clerk issuing the writ, payable to the defendant in the suit, in double the amount of the debt claimed therein, conditioned that he will prosecute his suit and pay all damages and costs that may be adjudged against him for wrongfully suing out such garnishment

**§8001. Contents of Affidavit For. §3.** Before the issuance of the writ of garnishment, the plaintiff or some one in his behalf shall make application therefor by affidavit, stating the facts authorizing the issuance of the writ, and that the plaintiff has reason to believe, and does believe, that the garnishee, stating his name and residence, is indebted to the defendant, or that he has in his possession, or under his control, personal property or effects belonging to the defendant, or that the garnishee is an incorporated or joint stock company, and that the defendant is the owner of shares in such company or has an interest therein.

Person holding goods wrongfully cannot be charged as garnishee, Wooding v. Puget Sound Nat. Bank 11 W. 527.

School warrants issued for salary of teacher cannot be garnished, Flood v. Libby 38 W. 366.

Property in safe deposit vaults, Trowbridge v. Spinning, 23 W. 48.

Draft subject to garnishment, Washing-

ton, etc., Co. v. Traders' Nat. Bank, 46 W. 23.

Drawing of checks prior to garnishment does not exempt bank account pro tanto, Bank v. Chilberg, 14 W. 247

Money due on fire insurance policy not exempt from garnishment unless property insured exempt from execution—diligence required, Wilson v. McLachlan, 12 W. 154.

**§8002. Issuance and Contents of Writ—Docket. §4.** When the foregoing requisites have been complied with, the clerk shall docket the case in the name of the plaintiff as plaintiff and of the garnishee as defendant, and shall immediately issue a writ of garnishment directed to the garnishee, commanding him to appear before the court from which it is issued within twenty days after the service of the writ upon him, if the same be served upon him within the county in which the same is issued, or within thirty days if served in any other county in this state, and to answer on oath what, if anything, he is indebted to the defendant and was when such writ was served, and what personal property or effects, if any, of the defendant he has in his possession or under his control, or had when such writ was served.

Plaintiff not required to pay docket fee, where garnishee pays over money after he has answered, Ward v. Ward 14 W. 640.

Kelly v. Ryan 8 W. 536.

Failure to docket case is no defense

**§8003. Affidavit and Answer in Garnishment of Corporate Stock. §5.**

Where it appears from the plaintiff's affidavit that the garnishee is an incorporated or joint stock company, in which the defendant is the owner of shares, or is interested therein, the writ of garnishment shall further require the garnishee to answer upon oath what number of shares, if any, the defendant owns in such company, or owned when such writ was served.

Creditor of corporation may garnishee stockholder receiving wrongful dividend, *Smith v. Gruber Lum. Co.* 81 W. 111.

**§8004. Form of Writ. §6.** Said writ may be substantially in the following form:

STATE OF WASHINGTON:

To A B, greeting:

Whereas, in the superior court of the State of Washington, in and for ..... county, in a certain cause wherein C D is plaintiff and E F is defendant, the plaintiff claiming an indebtedness against the said E F of ..... dollars, besides interest and cost of suit, has applied for a writ of garnishment against you.

Now, therefore, you are hereby commanded to be and appear before the said court within twenty days after the service upon you of this writ, if served within ..... county and within thirty days after the service of this writ upon you, if served in any other county of this state, then and there to answer upon oath what, if anything, you are indebted to the said E F, and were when this writ was served upon you, and what effects, if any of the said E F you have in your possession or under your control and had when this writ was served (and if the garnishee be an incorporated or joint stock company, in which the defendant is alleged to be the owner of shares or interested therein, then the writ shall proceed: and further to answer what number of shares, if any, the said E F owns in such company and owned when this writ was served upon you).

**§8005. Issuance of Writ. §7.** The writ of garnishment shall be dated and tested [attested] in like manner as the writ of attachment and the name and office address of the plaintiff's attorney shall be indorsed thereon or in case the plaintiff has no attorney, then the name and address of the plaintiff shall be indorsed thereon and delivered by the clerk who issues it to the plaintiff or his attorney. L. '03 91.

**§8006. Service of Writ. §8.** The writ of garnishment may be served by the sheriff or any constable of the county in which the garnishee lives or it may be served by any citizen of the State of Washington over the age of twenty-one years and not a party to the action in which it is issued in the same manner as a summons in an action is served. And in case such writ is served by an officer, such officer shall make his return thereon showing the time, place and manner of service and noting thereon his fees for making such service and shall sign his name to such return. In case such service is made by any person other than an officer, such person shall attach to the original writ, his affidavit showing his qualifications to make such service and the time, place and manner of making service but no fee shall be allowed for the service of such writ unless the same is served by an officer. L. '03 91.

Service may be made on sheriff by private individual, *Russell v. Millett* 20 W. 212. defendant on service of summons by publication and garnishment claims in- completely assigned, *Nixon v. Hendy*

Court acquires jurisdiction of non-resl- Mach. Wks., 51 W. 419.

**§8007. Garnishee Bound After Service. §9.** From and after the service of such writ of garnishment, it shall not be lawful for the garnishee to pay to the defendant any debt or to deliver to him any effects, nor shall the garnishee, if an incorporated or joint stock company, in which the defendant is alleged to be the owner of shares or to have an interest, permit or recognize any sale or transfer of such shares or interest; and any such payment, delivery, sale or transfer shall be void and of no effect as to so much of said debt, effects, shares or interest as may be necessary to satisfy the plaintiff's demand.

Deposit by third party for special pur- nishment as money of party to action, *Beas-*  
pose of satisfying liens not subject to gar- ton v. Portland Tr. & Sav. Bank 89 W. 627.



Writ will not hold insurance money payable to mortgagee as his interest may appear, *First National Bank v. Neilsen* 92 W. 84.

Garnishee defendant admitted he had note which was transferred. Burden is on him to explain transaction, *Wise v. Reed* 79 W. 134; attorney's lien sustained, *id.* 86 W. 11.

That garnishee, after service, paid a creditor of the judgment debtor is no defense, *Anderson v. Garrison* 86 W. 307.

Writ holds what garnishee had at time of service and up to time of answer, *Frieze v. Powell* 79 W. 483.

Contract for purpose of defeating held valid, *Larsen v. Allan Line Co.* 45 W. 406.

Draft is property and subject to garnish-

ment—for collection by bank, *Washington Brick Co. v. Traders' Nat. Bank* 46 W. 23.

Garnishee's disposal of property does not affect proceedings, *Eidemiller v. Elder* 32 W. 605.

Garnishee cannot object to judgment against principal defendant who was out of state, having been served by publication, *Holford v. Trewella*, 36 W. 654.

Defective docketing no defense to garnishee who pays over money after service, *Ward v. Ward*, 14 W. 640.

Liability of garnishee for interest, *Bellingham B. B. Co. v. Brisbois*, 14 W. 173.

Garnishee safe deposit company should keep exclusive control over box rented by defendant until discharged, *Trowbridge v. Spinney*, 23 W. 48.

**§8008. Discharge of Writ.** §91½. If the defendant in the principal action, shall at any time before the entry of final judgment in said principal action, cause a bond to be executed to the plaintiff with sufficient sureties, to be approved by the officer having the writ of garnishment, or after the return of said writ, by the clerk of the court out of which said writ was issued, to the effect that he will perform the judgment of the court: The writ of garnishment, shall upon the filing of said bond with the clerk, be immediately discharged, and all proceedings had thereunder shall be vacated. Provided That the garnishee shall not be thereby deprived from recovering any costs in said proceeding, to which he would otherwise be entitled under this act. L. '03 282.

Discharged on showing of solvency of defendant, *Sully v. Bushell* 50 W. 389.

**§8009. Answer of Garnishee.** §10. The answer of the garnishee shall be under oath, in writing, and signed by him, and shall make true answers to the several matters inquired of in the writ of garnishment, and shall be served upon the plaintiff or his attorney and filed with the clerk of the superior court.

Secretary of garnishee may make answer, *Frieze v. Powell* 79 W. 483.

Plaintiff consented to assignment for

benefit of creditors, held he could not hold goods in charge of assignee, *McAvoy v. Jennings* 39 W. 109.

**§8010. Discharge of Garnishee.** §11. Should it appear from the answer of the garnishee that he is not indebted to the defendant, and was not so indebted when the writ of garnishment was served on him, and that he has not in his possession or under his control any personal property or effects of the defendant, and had not when the writ was served, and when the garnishee is an incorporated or joint stock company, in which the defendant is alleged to be the owner of shares of stock or interested therein, if it shall further appear from such answer that the defendant is not, and was not when the writ was served, the owner of any of such shares or interested in such company, and should the answer of the garnishee not be controverted, as hereinafter provided, and within the time hereinafter provided, the court shall enter judgment discharging the garnishee.

Appeal from order discharging garnishment continues garnishee before court to determine his liability, *Seattle T. Co. v. Pitner*, 17 W. 365.

**§8011. Judgment by Default Against Garnishee.** §12. Should the garnishee fail to make answer to the writ within the time prescribed therein, it shall be lawful for the court, and on or after the time to answer such writ has expired, to render judgment by default against such garnishee for the full amount claimed by plaintiff against the defendant, or in case plaintiff has a judgment against defendant, for the full amount of such judgment with all accruing interest and costs.

**§8012. Garnishee Must Pay If Debt Is Due—Judgment Against Garnishee.** §13. Should it appear from the answer of the garnishee or should it be otherwise made to appear, as hereinafter provided, that the garnishee is indebted to the defendant in any amount, or was so indebted when the writ of garnishment was served, the court shall render judgment for the plaintiff against such garnishee for the amount so admitted or found to be due to the defendant from the garnishee, unless such amount shall exceed the amount of plaintiff's claim or demand against the defendant, with interest and costs, in which case it shall be for the amount of such claim or de-

mand, interest and costs: Provided, however, If it shall appear from the answer of the garnishee and the same is not controverted, or if it shall appear upon the trial, hereinafter provided for, that the garnishee is indebted to the principal defendant in any sum, but that such indebtedness is not matured, and is not due and payable, the court shall make an order requiring the garnishee to pay such sum into court when the same becomes due, the date when such payment is to be made to be specified in said order, and in default thereof that judgment shall be entered against the garnishee for the amount of such indebtedness so admitted or found due. In case the garnishee shall pay said sum at the time specified in said order, said payment shall operate as a discharge, otherwise judgment shall be entered against him for the amount of such indebtedness, which judgment shall have the same force and effect, and be enforced in like manner as other judgments provided for in this act: Provided further, That if judgment shall be rendered in favor of the principal defendant or if any judgment rendered against him be satisfied prior to the date of payment specified in said order, the garnishee shall not be required to make the payment hereinbefore provided for nor shall any judgment in such case be entered against him.

Future rent under lease not subject to writ, *Barkley v. Kerfoot* 77 W. 556.

Denial of plaintiff's motion for judgment against garnishee is not appealable, *Green v. Moore* 24 W. 241.

Garnishee, with notice of assignment by creditor, must bring same to court's attention *Bellingham B. B. Co. v. Brisbois*, 14 W. 173.

Plaintiff may show that garnishee is trustee of defendant's property, although defendant may have no enforceable right against garnishee, *Miller & Co. v. Plass*,

11 W. 237. Where only issue is whether garnishee has property of defendant, money judgment is error, *Campbell v. Simpkins*, 10 W. 160.

Defendant's interest in joint debt may be reached by garnishment, *Moore v. Gilmore*, 16 W. 123.

Where garnishee has given checks to cover future deliveries from time to time, he is not liable in garnishment nor is he bound to stop payment on the checks, *Larsen v. Allen L. S. S. Co.*, 45 W. 406.

**§8013. Execution on Judgment Against Garnishee—Application of Proceeds.** §14. Execution may be issued on the judgment against the garnishee herein provided for, in like manner as upon any other judgment. The amount made upon any such execution shall be paid by the officer executing the same to the clerk of the superior court from which such execution was issued; and in cases where judgment has been rendered against the defendant, the amount made on the execution shall be applied to the satisfaction of the judgment, interest and costs, against the defendant. In case judgment has not been rendered against the defendant at the time execution issued against the garnishee is returned, any amount made on said execution shall be paid to the clerk of the court from which such execution issued, who shall retain the same until judgment be rendered in the action between the plaintiff and defendant. In case judgment be rendered therein in favor of the plaintiff, the amount made on the execution against the garnishee shall be applied to the satisfaction of such judgment and the surplus, if any there be, shall be paid to the defendant. In case judgment be rendered in such action in favor of the defendant, the amount made on said execution against the garnishee shall be paid to the defendant.

Judgment against garnishee and payment into court, plaintiff entitled to fund State ex rel. *Tatum v. Fitzhenry* 48 W. 130.

**§8014. Delivery of Property by Garnishee and Disposition of the Same—Sale of Property.** §15. Should it appear from the garnishee's answer, or otherwise, that the garnishee has in his possession or under his control, or had when the writ was served, any personal property or effects of the defendant liable to execution, the court shall render a decree requiring the garnishee to deliver up to the sheriff, on demand, such personal property or effects or so much of them as may be necessary to satisfy the plaintiff's claim. In cases where a judgment has been rendered in favor of the plaintiff against the defendant, such personal property or effects may be sold in like manner as any other property is sold upon an execution issued on said judgment. In cases where judgment has not been rendered in the principal action, the sheriff shall retain said personal property or effects in his possession until the rendition of judgment therein, and in case judgment is ren-



dered in said principal action in favor of the plaintiff, said goods or effects, or sufficient of them to satisfy such judgment, may be sold in like manner as other property is sold on execution, by virtue of an execution issuing on said judgment. In case judgment shall be rendered in said action against the plaintiff and in favor of the defendant, such effects and personal property shall be, by the sheriff, returned to the defendant: Provided, however, That in cases where such effects or personal property are of a perishable nature, or the interests of the parties will be subserved by making a sale thereof before judgment, the court may order a sale thereof by the sheriff, in like manner as sales upon execution are made, and the proceeds of a sale shall be paid to the clerk of the superior court, and like disposition shall be made of such proceeds at the termination of the action, as would have been made of such personal property or effects under the provisions of this section, in case such sale had not been made.

Sales under execution, §7893.

10 W. 160.

Keeper of safe deposit vaults has control of property although depositor has private box, *Trowbridge v. Spinning* 23 W. 49.

Garnishee's lien if any must be satisfied, *Coombs v. Davis* 2 W. T. 466.

A money judgment against the garnishee when he has only personal property in his possession is error, *Campbell v. Simpkins*

Courts has no jurisdiction to make orders concerning property without parties interested in court, *Weisbach v. Arnold* 3 W. T. 111.

**§8015. Contempt Against Garnishee. §16.** Should the garnishee, adjudged to have effects or personal property of the defendant in his possession or under his control as provided in the preceding article, fail or refuse to deliver them to the sheriff on such demand, the officer shall immediately make return of such failure or refusal, whereupon, on motion of the plaintiff the garnishee shall be cited to show cause why he should not be attached for contempt of court for such failure or refusal, and should the garnishee fail to show some good and sufficient excuse for such failure and refusal, he shall be fined for such contempt and imprisoned until he shall deliver such personal property or effects.

**§8016. Sales of Corporate Stock. §17.** Where the garnishee is an incorporated or joint stock company, and it appears by the answer or otherwise that the defendant is, or was when the writ of garnishment was served, the owner of any shares of stock in such company or any interest therein, the court shall render a decree ordering the sale under execution in favor of the plaintiff against the defendant, of such shares or interest of the defendant in such company, or so much thereof as may be necessary to satisfy such execution.

Pledged corporate stock may be garnished and sold to the extent of the debtor's interest therein—claim of lien to defeat garnishment rejected, *Hardin v. White Swan Mining Etc. Co.* 26 W. 583.

**§8017. Manner of Sale of Corporate Stock—Transfer. §18.** The sale so ordered shall be conducted in all respects as other sales of personal property under execution, and the sheriff making such sale shall execute a transfer of such shares or interest to the purchaser, with a brief recital of the judgment of the court under which the same was sold.

**§8018. Effect of Sale—Corporation Shall Make Transfer. §19.** Such sale shall be valid and effectual to pass to the purchaser all the right, title and interest which the defendant had in such shares of stock, or in such company, and the proper officers of such company shall enter such sale and transfer on the books of the company in the same manner as if the sale had been made by the defendant himself.

**§8019. Plaintiff's Reply to Garnishee. §20.** If the plaintiff should not be satisfied with the answer of the garnishee, he may controvert the same by affidavit in writing, signed by him, stating that he has good reason to believe and does believe that the answer of the garnishee is incorrect, stating in what particulars he believes the same is incorrect.

Affidavit controverting answer and setting up purchase of goods in bulk contrary to law, is sufficient affidavit, *McDaniels v. Connelly Shoe Co.* 30 W. 549.

Fraudulent sale of property to garnishee may be shown, *Millar & Co. v. Plass* 11 W. 237.

**§8020. Defendant's Reply to Garnishee. §21.** The defendant may also in like manner controvert the answer of the garnishee.

Exemption is lost if no answer made, U. S. Fidelity etc. Co. v. Hollenshead 51 W. 326.

§8021. Trial of Issues. §22. If the answer of the garnishee is controverted, as provided in the two preceding sections, an issue shall be formed, under the direction of the court, and tried as other cases: Provided, however, No pleadings shall be necessary on such issue other than the affidavit of the plaintiff, the answer of the garnishee and the reply of the plaintiff or defendant controverting such answer, unless otherwise ordered by the court.

In an appeal plaintiff not required to give garnishee appeal bond, Seattle Trust Co. v. Pitner 17 W. 365. Garnishment is properly heard while the main action is tried, Title Guaranty Etc. Co. v. Seattle Theatre Co. 23 W. 517.

Garnishment must be prosecuted with diligence Wooding v. Puget Sound Nat. Bank 11 W. 727. Under former law appearance of garnishee was not adverse proceeding, Coombs v. Davis 2 W. T. 466.

§8022. Current Wages—Exempt. §23. Current wages or salary to the amount of one hundred dollars (\$100.00) for personal services rendered by any person having a family dependent upon him for support, shall be exempt from garnishment, and where it appears upon the trial, or by answer of the garnishee, when not controverted as hereinafter provided, that the garnishee is indebted to the defendant for such current wages or salary for an amount not exceeding one hundred dollars (\$100.00), the garnishee shall be discharged as to such indebtedness: Provided, That if the garnishment be founded upon a debt for actual necessities furnished to the defendant or his family or his dependents, no exemption shall be allowed in excess of ten dollars (\$10.00) out of each week's wages or salary, whether said wages or salary are paid, or to be paid, weekly, bi-weekly, monthly, or at other intervals, and whether there be due the defendant wages for one week or a longer period: Provided, however, That said exemption shall in no event be allowed out of wages or salary for a longer period than four (4) consecutive weeks: And provided, further, That no money due or earned as wages or salary shall be exempt from garnishment in lieu of any other property. The provisions of this section shall apply to actions in the superior court or before justices of the peace, and shall govern exemptions of wages or salary to the exclusion of all other statutes or parts of statutes. L. '07 477

Wages for four weeks not exceeding total of \$100 is exempt—garnishee liable for wages not exempt paid after service, Lemagle v. Acme Stamp Works 98 W. 34.

Falling to refer to general exemption law does not invalidate title of act, Creditor's Collection Ass'n v. Bisbee 80 W. 358.

Bankrupt entitled to exemption under former law, In re Holden 127 Fed. 980.

Priority of labor claims, §9736; no exemption, §7852.

Exemptions in supplementary proceedings, §7951.

Exemptions generally, §7851.

§8023. Costs. §24. Where the garnishee is discharged upon his answer, the costs of the proceeding, including a reasonable compensation to the garnishee for attorney's fees, shall be taxed against the plaintiff; where the answer of the garnishee has not been controverted and the garnishee is held thereon, such costs shall be taxed against the defendant and included in the judgment. Where the answer is controverted the costs shall abide the issue of such contest.

Admission by plaintiff's attorney dismissed garnishee—attorney fee without evidence, Allen v. Allen 96 W. 689.

Garnishee allowed attorney's fee an-

swer controverted to no avail, Puget Sound I. & S. Works v. First International Bank 91 W. 109.

Garnishee discharged entitled to costs, Whitehouse v. Nelson 43 W. 174.

§8024. Garnishee May Plead Garnishment as Bar. §25. It shall be a sufficient answer to any claim of the defendant against the garnishee founded on any indebtedness of such garnishee or on the possession by him of any personal property or effects, or where the garnishee is an incorporated or joint stock company in which the defendant was the owner of shares of stock or other interest therein, for the garnishee to show that such indebtedness was paid or such effects delivered, or such shares of stock or other interest in such company were sold under the judgment of the court in accordance with the provisions of this act.

§8025. Justices' Court Excepted From Act. §26. The provisions of this act shall not apply to actions and proceedings before justices of the peace, but garnishments shall be made in such actions and proceedings in the manner now provided by existing laws.



**AN ACT** making counties, cities, towns, school districts and other municipal corporations subject to garnishment. Approved March 17, 1915. Laws '15 p 357.

**§8026. Garnishment of All Classes of Municipal Corporations.** §1. Counties, cities, towns, school districts and other municipal corporations shall be subject to garnishment in the superior and justice courts, but only after judgment shall have been entered against the defendant in the main action.

Act valid—exemption as wages must be claimed in time—officer's salary subject to writ, *Hanson v. Hodge* 92 W. 425.

**§8027. How Adjudged—Exemption of Wages Not Impaired.** §2. No regular judgment in garnishment shall be entered against any municipal corporation, but the judge of the superior court, or justice of the peace shall by written order command the auditing officer, or body of such municipal corporation to audit and pay to the judgment creditor the amount due from the garnishee to the principal defendant, not exceeding the amount of the judgment in the main action, whereupon the same shall be paid by the garnishee, provided, nothing in this act shall be construed to impair the rights of defendants to claim exemptions of wages as provided by law.

## HABEAS CORPUS.

Supreme court rules §7338r.

Rules superior court §8431p.

**§8028. Writ to Release From All Illegal Arrests.** §666.—666. Every person restrained of his liberty under any pretense whatever, may prosecute a writ of habeas corpus to inquire into the cause of the restraint and shall be delivered therefrom when illegal.

Writ will not lie to release child confined under juvenile act, *In re Chartrand* 102 W. 36.

Want of jurisdiction in court not ground for writ—appeal is remedy, *In re Herman* 79 W. 149.

Writ does not lie to correct error, *In re Newcomb* 56 W. 395; *In re Hamilton* id 405; nor for immediate trial id.

Person not a fugitive from justice held under extradition warrant should be discharged, *Poor v. Cudihee* 37 W. 609.

Is civil writ—stay must be given on appeal, *State v. Fenton* 30 W. 325; *State ex rel. Roberts v. Superior Court* 32 W. 143.

Infant committed to reform school entitled to bail pending appeal—supreme court may grant though there is other remedy, *Packenhams v. Reed* 37 W. 258.

Supreme court or any judge has original jurisdiction and may direct the writ in the first instance or the clerk may issue order nisi, *In re Rafferty* 1 W. 382.

Writ pending custody person in court whether person restrained left in original custody or not an interference is contempt, *In re Grant* 26 W. 412.

Where there are two judgments one expired and sentence is had on it habeas corpus will lie, *Davis v. Catron* 22 W. 183.

Custodian of fugitive does not have to produce papers of demanding state—sufficiency of warrant, *In re Sylvester* 21 W. 263.

Courts will inquire into sufficiency of foreign indictment in rendition of fugitive—requisition attested by lieutenant gov.

error good, *Armstrong v. Van Devanter* 21 W. 682.

Habeas corpus will not lie to release convict of sister state—extradition does not apply, *In re Maney* 20 W. 509.

Assumption of custody by superior court though erroneous is not false imprisonment—expenses not recoverable in separate action, *Lovell v. House of the Good Shepherd* 14 W. 211.

Status of proceedings in state court when application is made to federal court, *State v. Humason* 4 W. 413.

Federal courts will grant habeas corpus only under federal statutes and will not correct error of state courts, *In re Humason* 46 Fed. Rep. 388; *In re Moore* 81 Fed. Rep. 356; *In re Considine* 83 Fed. Rep. 157.

Where it is claimed that imprisonment is contrary to federal law federal courts may grant writ or direct that petitioner appeal to State Supreme Court and prosecute writ of error to Supreme Court of the United States. The latter method the better practice, *Ex parte Frederick* 149 U. S. 70.

Will lie to release child unlawfully detained in reform school, *In re Mason*, 3 W. 609; or to release prisoner held under judgment of court without jurisdiction, *In re Permstick*, 3 W. 672; or prisoner in penitentiary pending appeal, *Ex parte Jones*, 2 W. 551; but see *Way v. Woolery*, 6 W. 157.

One charged with crime entitled to discharge where failure to try him because no jury called, *State v. Brodie*, 7 W. 442.

Does not apply to new trial, *In re Murphy*, 7 W. 257.

**§8029. Petition for Writ. §667.—667.** Application for the writ shall be made by petition, signed and verified, either by the plaintiff or by some person in his behalf, and shall specify,

1. By whom the petitioner is restrained of his liberty and the place where, (naming the parties if they are known or describing them if they are not known).

2. The cause of [or] pretense of the restraint according to the best of the knowledge and belief of the applicant.

3. If the restraint be alleged to be illegal in what the illegality consists.

Identity of prisoner must be made issue—rendition warrant prima facie evidence of necessary facts, *In re Gillis* 38 W. 156.

**§8030. Writ to Be Granted Without Delay by Any Court or Judge. §668.—668.** Writs of habeas corpus may be granted by the supreme court or superior court, or by any judge of either court, whether in term or vacation and upon application the writ shall be granted without delay.

**§8031. Writ Directed to Person Restraining. §669.—669.** The writ shall be directed to the officer or party having the person under restraint, commanding him to have such person before the court or judge at such time and place as the court or judge shall direct, to do and receive what shall be ordered concerning him, and have then and there the writ.

**§8032. Service by Clerk on Sheriff. §670.—670.** If the writ be directed to the sheriff, it shall be delivered by the clerk to him without delay.

**§8033. All Other Services by Sheriff. §671.—671.** If the writ be directed to any other person, it shall be delivered to the sheriff and shall be by him served by delivering the same to such person without delay.

**§8034. Service by Leaving or Posting Writ. §672.—672.** If the person to whom such writ is directed, cannot be found, or shall refuse admittance to the sheriff, the same may be served by leaving it at the residence of the person to whom it is directed, or by posting the same on some conspicuous place, either of his dwelling house or where the party is confined or under restraint.

**§8035. Immediate Return Shall Be Made. §673.—673.** The sheriff or other person to whom the writ is directed shall make immediate return thereof, and if he refuse after due service to make return, the court shall enforce obedience by attachment.

**§8036. Restraining Person Must Make Verified Return. §674.—674.** The return must be signed and verified by the person making it, who shall state:

1. The authority or cause of the restraint of the party in his custody.  
2. If the authority shall be in writing, he shall return a copy and produce the original on the hearing.

3. If he has had the party in his custody or under his restraint, and has transferred him to another, he shall state to whom, the time, place and cause of the transfer. He shall produce the party at the hearing unless prevented by sickness or infirmity, which must be shown in the return.

**§8037. Trial on Return. §675.—675.** The court or judge, if satisfied of the truth of the allegation of sickness or infirmity, may proceed to decide on the return, or the hearing may be adjourned until the party can be produced, or for other good cause. The plaintiff may except to the sufficiency of, or controvert the return or any part thereof, or allege any new matter in evidence. The new matter shall be verified except in cases of commitment on a criminal charge. The return and pleadings may be amended without causing a delay.

**§8038. Summary Trial. §676.—676.** The court or judge shall thereupon proceed in a summary way to hear and determine the cause, and if no legal cause be shown for the restraint or for the continuation thereof shall discharge the party.

Cannot be superseded on appeal, *State ex McGhee v. Court* 99 W. 619.



**§8039. Valid Causes of Detention. §677.** No court or judge shall inquire into the legality of any judgment or process whereby the party is in custody, or discharge him when the term of commitment has not expired, in either of the cases following:

1. Upon any process issued on any final judgment of a court of competent jurisdiction.

2. For any contempt of any court, officer, or body having authority in the premises to commit; but an order of commitment, as for a contempt upon proceedings to enforce the remedy of a party, is not included in any of the foregoing specifications.

3. Upon a warrant issued from the superior court upon an indictment or information. L. '91 82.

In extradition courts will see that crime is substantially charged, *In re Rudebeck* 95 W. 423.

Writ granted to admit to bail in civil action, *State ex rel Syverson v. Foster* 84 W. 58.

Sufficiency of warrant not inquired into—fraud on innkeepers is not "debt" and imprisonment valid, *In re Milecke* 52 W. 312.

Release not granted because statute unconstitutional, *In re Putnam* 58 W. 687.

Parent may collaterally attack judgment when not a party to action, *Beatty v. Davenport* 45 W. 555.

Only jurisdictional defects of information will be inquired into, *State ex rel. Zenner v. Graham* 34 W. 81.

Commitment to penitentiary regular defendant cannot show crime was committed on military reservation, *Russell v. Kees* 40 W. 244.

Defendant's only remedy is by appeal, *In re Rafferty* 1 W. 382.

**§8040. No Discharge When Cause of Commitment. §678.—678.** No person shall be discharged from an order of commitment issued by any judicial or peace officer for want of bail or in cases not bailable on account of any defect in the charge or process, or for alleged want of probable cause; but in all cases the court or judge shall summon the prosecuting witnesses, investigate the criminal charge and discharge, admit to bail, or re-commit the prisoner, as may be just and legal, and recognize witnesses when proper.

**§8041. Writ to Admit to Bail—Notice to Interested Party. §679.—679.** The writ may be had for the purpose of admitting a prisoner to bail in civil and criminal actions, When any person has an interest in the detention, and the prisoner shall not be discharged until the person having such interest is notified.

Writ to admit to bail in civil action, *State ex rel Syverson v. Foster* 84 W. 58.

**§8042. Court or Judge Has Full Power. §680.—680.** The court or judge shall have the power to require and compel the attendance of witnesses, and to do all other acts necessary to determine the case.

**§8043. Officers Not Liable for Obeying Writ. §681.—681.** No sheriff or other officer shall be liable to a civil action for obeying any writ of habeas corpus or order of discharge made thereon.

**§8044. Warrant to Take Person Restrained. §682.—682.** Whenever it shall appear by affidavit that any one is illegally held in custody or restraint, and that there is good reason to believe that such person will be carried out of the jurisdiction of the court or judge before whom the application is made, or will suffer some irreparable injury before compliance with the writ can be enforced, such court or judge may cause a warrant to be issued reciting the facts, and directed to the sheriff or any constable of the county, commanding him to take the person thus held in custody or restraint and forthwith bring him before the court or judge to be dealt with according to the law.

Writ to inquire into commitment to enforce remedy of a party as in divorce or supplementary proceedings and party released because courts cannot enforce simple money judgment by contempt process, *In re Van Alstine* 21 W. 194; *In re Coulter* 25 W. 526.

Writ will not release defendant because amendatory act invalid since he may be held under act before amendment, *In re Nolan* 21 W. 395.

Municipal court could not commit child to reform school and child released by writ, *In re Barbee* 19 W. 306.

Writ will not release defendant committed for fine, *Way v. Woolery* 6 W. 156.

If court is competent and judgment fair on its face writ will not lie—statute is not unconstitutional, *In re Lybarger* 2 W. 131.

Appeal is remedy not habeas corpus if justice fixes punishment, *In re Casey* 28 W. 686.

Former jeopardy is not basis of writ in supreme court, *Steiner v. Nerton* 6 W. 23.

**§8045. Warrant for Person Restraining.** §683.—683. The court or judge may also if the same be deemed necessary insert [in] a warrant a command for the apprehension of the person charged with causing the illegal restraint.

**§8046. Execution of the Writ.** §684.—684. The officer shall execute the writ by bringing the person therein named before the court or judge, and the like return of proceeding, shall be required and had as in case of writs of habeas corpus.

**§8047. Temporary Orders.** §685.—685. The court or judge may make any temporary orders in the cause or disposition of the party, during the progress of the proceedings, that justice may require. The custody of any party restrained may be changed from one person to another by order of the court or judge.

Judge other juvenile courts has power to change custody of child, State ex De Bit v. Mackintosh 98 W. 438.

**§8048. Writ on Sunday.** §686.—686. Any writ or process authorized by this chapter may be issued and served in cases of emergency on Sunday.

**§8049. Form of Service and Return of Writs.** §687.—687. All writs and other process authorized by this chapter shall be issued by the clerk of the court, and sealed with the seal of such court and shall be served and returned forthwith, unless the court or judge shall specify a particular time for such return. And no writ or other process shall be disregarded for any defect therein, if enough is shown to notify the officer or person of the purport of the process. Amendments may be allowed and temporary commitments when necessary.

**§8050. Writ May Be Had for Custody of Infants and Insane.** §688.—688. Writs of habeas corpus shall be granted in favor of parents, guardians, masters and husbands, and to enforce the rights, and for the protection of infants and insane persons; and the proceedings shall in all cases conform to the provisions of the [this] chapter.

Divorced wife violating order for the of decree in defense of habeas corpus, custody of child cannot ask a modification Beers v. Walker 101 W. 683.

## INJUNCTION.

Appeal, plaintiffs bond—appeal to U. S. Executions, in supplementary proceedings supreme court §7299. §7938.

Dike law enforced by §1946-56.

Drainage law enforced by §1947-40.

Horticulture, to enforce act regulating §2737.

**§8052. Authority to Issue Injunctions.** §153.—153. Restraining orders and injunctions may be granted by the superior court in term time, or by any judge of the supreme court in vacation.

Will lie to restrain continued trespass, 68 W. 431.

Watsern Academy, etc. v. De Bit 101 W. 42.

Will not lie to restrain use of lands by public service corporation—remedy at law. Irwin v. J. K. Lumber Co. 102 W. 99.

Mandamus cannot be affected by injunction. State ex O'Neill v. Wallace 101 W. 410.

Power of judge to issue outside of county. §8643.

Power of judge limited to express authority, §8568.

Proceedings supplementary to execution, §7938.

Tax cases, tender of amount due condition precedent, §8074.

Authorized in dike cases, §1946-56; drain cases, §1947-40; U. S. land contests, §7527.

Pending contest of will, §10047.

Pending motion to modify a judgment, §8139.

To remain in force pending appeal—bond, §7299.

Nuisance cases, §8232.

Supreme court stayed injunction on appeal, Campbell Lum. Co. v. Deep River Co.

Superior courts always open, Const., art. 4, §6, §8630; powers supreme judges, Const., art. 4, §4, §8666.

Cotenant cannot obtain unless insolvency or partial destruction of estate shown, Tift Co. v. State Medical Institute, 53 W. 365.

Will lie against invalid execution although execution may be quashed, Cline Piano Co. v. Sherwood 57 W. 239.

Will not lie to restrain tenant as trespasser, under unacknowledged lease there being other adequate remedy, Reeves v. Flath 59 W. 299.

Will not lie against criminal judgment where no property rights affected, Brown v. State 59 W. 195.

Order restraining county auditor from issuing warrant not based on proper proceedings void, State ex rel. Martin v. Pendergast 39 W. 132.

Writ will lie to abate house of prostitution. Dempsie v. Darling 39 W. 125.

Writ will lie to prevent change of grade of street before compensation paid, Swope



v. Seattle 35 W. 69.

Will lie to abate bawdy house in action by private party—existence at time of purchase or toleration by city no defense, *Ingersoll v. Rousseau* 35 W. 92.

Holders of county warrants are necessary parties to action to enjoin payment, *State ex rel. Reed v. Gormley* 40 W. 601.

Writ will lie in action by lodging house keeper to restrain musical instruments and shooting gallery—necessary allegations, *Grantham v. Gibson* 41 W. 125.

Injunction against auxiliary suits will not

**§8053. Grounds of Issuance—Temporary Injunction. §154.—154.** When it appears by the complaint that the plaintiff is entitled to the relief demanded and the relief, or any part thereof, consists in restraining the commission or continuance of some act, the commission or continuance of which, during the litigation, would produce great injury to the plaintiff; or when during the litigation, it appears that the defendant is doing, or threatens, or is about to do, or is procuring, or is suffering some act to be done in violation of the plaintiff's rights respecting the subject of the action tending to render the judgment ineffectual; or where such relief, or any part thereof, consists in restraining proceedings upon any final order or judgment, an injunction may be granted to restrain such act or proceedings until the further order of the court, which may afterwards be dissolved or modified upon motion. And where it appears in the complaint at the commencement of the action, or during the pendency thereof, by affidavit, that the defendant threatens, or is about to remove or dispose of his property with intent to defraud his creditors, a temporary injunction may be granted to restrain the removal or disposition of his property.

Will not lie to control foreign corporation *Tolbert v. Modern W. of A.* 83 W. 287.

Will lie to restrain threatened arrest and prosecution (under criminal act not applicable) to the ruin of business—a teacher's employment agency, *Huntworth v. Tanner* 87 W. 670.

Will not lie to prevent state land commissioners reappraising tide lands, speculating a depreciation of warrants against a special fund, *Bouckaert v. State Land Com'rs* 84 W. 356.

Will lie to prevent labor union from interfering with employees, *Commercial B. & P. Co. v. Tacoma Typo. Union No. 170*, 85 W. 234.

Will lie to prevent wrongful cancellation of insurance agent's license, *Calvin Phillips & Co. v. Fishback* 84 W. 124.

Will not lie when adequate remedy by forcible entry and detainer, *Cogswell v. Cogswell*, 70 W. 184.

Injunction supplemental to execution against one not a party to action, without notice nor bond nor showing of emergency is void, *Meier v. Fidelity Nat. Bank* 43 W. 324.

Will lie to prevent obstruction of right of way, *Kalinowski v. Jochowski* 52 W. 359.

City bonds merely irregular will be enjoined, *Aylmore v. Seattle* 48 W. 42.

Will not lie against lessor ejecting tenant for nuisance, *Spokane Stamp Works v. Ridpath* 48 W. 370.

Temporary against removal of standing timber discretionary, *Seymour v. La Furgey* 47 W. 450.

Mandatory requiring restoration of street where change of grade sought, *Hart v. Seattle* 45 W. 300.

Will not lie to restrain enforcement of judgment against garnishee—appeal being

prevent defense when actions are brought, *Sibson v. Hamilton & Rourke Co.* 21 W. 362.

Injunction against state officer by private citizen, complaint must show special damage, *Birmingham v. Cheetham* 11 W. 657.

Order without notice to plaintiff discharging bond given by defendant to vacate restraining order against disposal of property in controversy is a nullity, *Kleeb v. Bard* 12 W. 140.

remedy, *Eidemiller v. Elder* 32 W. 605.

Will lie against enforcement of penal ordinance not a police regulation, *Hillman v. Seattle* 33 W. 14.

Injunction forbidding acts cannot be superseded on appeal *State ex rel. Flaherty v. Superior Court* 35 W. 200.

Check as guarantee to town for the construction of street railway on granting franchise, forfeited to general fund writ will not lie to prevent money from being drawn out, *Furth v. West Seattle* 37 W. 387.

Injunction restraining election, granted ex parte the day before election—violation of—contempt, *State v. Nicoll*, 40 W. 517.

Without showing of injury injunction will not lie against tenant in possession to restrain transfer if lis pendens has been filed, *Spokane v. Amsterdamsch Etc.* 18 W. 81.

When lis pendens available injunction should not be granted, *Rockford Watch Co. v. Rumpf* 12 W. 647.

Constantly recurring damages as from unnatural flow of surface water injunction is proper remedy, *Peters v. Lewis* 28 W. 366.

Without special showing of injury injunction will not lie by tax payers or city against state officers doing public acts, *Tacoma v. Bridges* 25 W. 221.

Action for damages may be maintained by judgment creditor alone where execution sale was enjoined—attorney fees and expenses recoverable, *Anderson v. Provident Life & Trust Co.* 26 W. 192.

Complaint and relief by injunction in letting city printing sustained, *Times Ptg. Co. v. Seattle* 25 W. 149.

Abutting owner on public street may enjoin illegal construction of railway,

W. 21.

Injunction will not lie to restrain saloon business because employees frequent place, Wilkeson Coal Etc. Co. v. Driver 9 W. 177.

Will not lie in favor of employer to restrain sale of liquor because employee becomes intoxicated, Northern Pac. R. R. Co. v. Whalen 3 W. T. 452.

Injunction will not lie to restrain sale of community property in mechanic's lien foreclosure because wife not made a party Turner v. Bellingham Bay Lumber Co. 9 W. 484.

Injunction will lie to restrain the diversion of water and lapse of nine years is not estoppel, Rigney v. Tacoma Light & W. Co. 9 W. 576.

Continuing injury by booming logs may be enjoined, Watkinson v. McCoy 23 W. 372.

Injunction will lie against execution improvidently issued or wrongfully levied, Grant v. Cole, 23 W. 542.

Injunction lies to prevent party from redeeming in mortgage foreclosure sale on judgment sale against grantor of mortgage because the latter fraudulent, Preston-Parton Mill Co. v. Dexter Horton & Co. 22 W. 236.

Injunction will not lie to restrain injury by use of kindred name to good will of newspaper purchased under execution, Lawrence v. Times Printing Co. 22 W. 482.

Injunction will lie to prevent interference with duties of de facto officer, State ex rel. Fairbanks v. Superior Court 17 W. 12.

Owner or tenant on bank of stream may enjoin threatened diversion of waters of stream, Crook v. Hewitt 4 W. 749.

Injunction will not lie to restrain intangible injuries as the pumping of water from a lake, Wintermute v. Tacoma L. & W. Co. 3 W. 727.

Injunction will not lie to restrain the issuance of excess warrants for county road at instance of taxpayer who has petitioned

Amendatory—AN ACT to correct errors and supply omissions in the Code of Washington. Approved November 28, 1883. Laws '83 p 44.

**§8054. Injunction to Restrain or Abate Malicious Structures.** §154½. An injunction may be granted to restrain the malicious erection, by any owner or lessee of land, of any structure intended to spite, injure or annoy an adjoining proprietor. And where any owner or lessee of land has maliciously erected such a structure with such intent, a mandatory injunction will lie to compel its abatement and removal.

Statute strictly construed garage not prohibited, Jones v. Williams 56 W. 588.

Title of this act good—was ratified by Congress. It is not a taking of property without compensation, Karasek v. Peier 22 W. 419.

Fence is a structure, id.

**§8055. Injunction at Any Time.** §155.—155. The injunction may be granted at the time of commencing the action, or at any time afterwards, before judgment in that proceeding.

**§8056. Ex Parte Proceeding to Obtain.** §156.—156. No injunction shall be granted until it shall appear to the court or judge granting it, that some one or more of the opposite party concerned, has had reasonable notice of the time and place of making application, except that in cases of emergency to be shown in the complaint, the court may grant a restraining order until notice can be given and hearing had thereon.

and stood by, Travis v. Ward 2 W. 30.

Injunction will lie to restrain county commissioners to submit removal of county seat without requisite petition, Ricky v. Williams 8 W. 479.

Injunction will lie to compel water company under franchise to supply water to electric light plant of city—assignment by city, Jenkins v. Columbia Land Etc. Co. 13 W. 502.

It seems that Superior Court can enjoin county officers from incurring debt beyond their power as in removal of county seat, Kreischel v. County Commissioners 12 W. 428.

Injunction will lie to restrain destruction of property in foreclosure of chattel mortgage, Schoonover v. Condon 12 W. 475.

Injunction should not be granted in action on written contract with basis of injunction resting in parol which is not admissible Gordon v. Parke & Lacey Mach. Co. 10 W. 18.

Injunction against loss of sales of textbooks for schools properly denied where plaintiff demurs and does not reply to answer which negatives loss of sale, Rand, McNally & Co. v. Hartranft 29 W. 591.

Mandatory injunction will not lie to compel corporate officer regularly in possession to turn over property, Standard Gold Mining Co. v. Byers 31 W. 100.

Pre-emptor may protect possession and against trespass, Colwell v. Smith 1 W. T. 92.

Proceedings may be stayed when sheriff's return false, Washington Etc. Co. v. Kinnear 1 W. T. 99.

Will lie to restrain trustee, Bingham v. Walla Walla 3 W. T. 68.

No greater restraint should be made than protection of interest requires, Oregon Co. v. Hall 1 W. T. 284.

Injunction will not lie for a mere trespass, Kennedy v. Elliott 85 Fed Rep. 832.

Contractee of real property may enjoin condemnation, Olson v. Seattle 30 W. 687.

Though there is no declaration, that acts are illegal giving right of injunction is such declaration, id.

Proprietor means tenant or owner—mandatory injunction will lie to abate Winsor v. German Savings & L. Soc. 31 W. 365.



Emergency order of no force after reasonable time for hearing, *Hemen v. Rinehart* 45 W. 1.

Restraining order cannot be kept in force pending appeal if cause dismissed before hearing on temporary injunction,

State ex rel. *Miller v. Lichtenberg* 4 W. 407.

Injunction granted ex parte without definite time for hearing is void, *Larsen v. Winsor* 14 W. 109; *In re Groen* 22 W. 53; compare *Rockford v. Rumpf* 12 W. 647.

**§8057. Affidavits May Be Used at Hearings.** §157.—157. On the hearing of an application for an injunction, each party may read affidavits.

B. C. §5436; 2 H. C. §272.

**§8058. Terms on Party Obtaining.** §158.—158. Upon the granting or continuing an injunction, such terms and conditions may be imposed upon the party obtaining it as may be deemed equitable.

**§8059. Bond and Justification of Sureties.** §159.—159. No injunction or restraining order shall be granted until the party asking it shall enter into a bond, in such a sum as shall be fixed by the court or judge granting the order, with surety to the satisfaction of the clerk of the superior court, to the adverse party affected thereby, conditioned to pay all damages and costs which may accrue by reason of the injunction or restraining order. The sureties shall, if required by the clerk, justify in like manner as bail upon an arrest, and until they so justify, the clerk shall be responsible for their sufficiency.

Temporary injunction without bond is error, *Western Academy of Beaux Arts v. De Bit* 101 W. 42.

Judgment against surety without notice even after remedy changed—damages prior to bond, *Costello v. Bridges* 81 W. 192.

Action on bond—voluntary dismissal after service quashed, measure of damages on bond, *Mann v. Becker* 90 W. 534.

Bond liable for attorney's fees in dissolution—reasonable fee, *Berne v. Maxham* 82 W. 235.

Bond liable for subsequent conditions—two injunctions—measure of damages—interest, *Tacoma v. Sperry & Hutchinson Co.* 82 W. 393.

Justification in arrest and bail, §7366.

Action on bond may allege damages greater than secured by bond—counterclaim for trespass denied—damage up to hearing, *Maughlin Mill Co. v. Hamilton* 61 W. 66.

Receiver must give bond for injunction.

**§8060. Bond for Restraining Order Stands for Injunction.** §160.—160. When an injunction is granted upon the hearing, after a temporary restraining order, the plaintiff shall not be required to enter into a second bond, unless the former shall be deemed insufficient, but the plaintiff and his surety shall remain liable upon his original bond.

**§8061. Form of Writ.** §161.—161. It shall not be necessary to issue a writ of injunction, but the clerk shall issue a copy of the order or injunction duly certified by him, which shall be forthwith served by delivering the same to the adverse party.

Enforcement of orders and judgments, §7829.

Injunction binds receiver subsequently appointed, *Steel v. Gordon* 14 W. 521.

**§8062. Release of Errors if Injunction Restrains Judgment.** §162.—162. In application to stay proceedings after judgment, the plaintiff shall endorse upon his complaint a release of errors in the judgment whenever required to do so by the judge or court.

**§8063. Injunction Binds Everybody Informed.** §163.—163. An order of injunction shall bind every person and officer restrained, from the time he is informed thereof.

Neither formal entry by the clerk nor service necessary to render injunction operative, *State ex rel. Curtiss v. Erickson* 66 W. 639.

Injunctional order held binding from the time of announcement of the court that a restraining order would issue, *State v. Erickson*, 66 W. 639.

§8064

Injunction against corporation binds receiver subsequently appointed, *Steel v. Sternberg*, 19 W. 679; *State ex rel. Victor Boom Co. v. Peterson*, 29 W. 571.  
 Where city officers restrained, it is their duty to stop election, *State v. Nicoll* 40 W. 517.  
 Person not party to suit or sustaining relation thereto not bound, *Savage v.*

§8064. Filing of Bond and Service Required. §164.—164. When notice of the application for an injunction has been served upon the adverse party, it shall not be necessary to serve the order upon him, but he shall be bound by the injunction as soon as the bond required of the plaintiff is executed and delivered to the proper officer.

§8065. Moneys Collected on Judgment Enjoined Shall Be Deposited. §165.—165. Money collected upon a judgment afterward enjoined, remaining in the hands of the collecting officer, shall be paid to the clerk of the court granting the injunction subject to the order of the court.

§8066. Contempt of Injunctions—Procedure. §166.—166. Whenever it shall appear to any court granting an order of injunction, or judge thereof in vacation, by affidavit, that any person has willfully disobeyed the order after notice thereof, such court or judge shall award an attachment for contempt against the party charged, or a rule to show cause why it should not issue. The attachment or rule shall be issued by the clerk of the court, and directed to the sheriff, and shall be served by him.

Contempts generally, §7442; criminal contempts, §8786.

§8067. Arrest of Person Violating—Protection of the Other Party. §167.—167. The attachment for contempt shall be immediately served, by arresting the party charged, and bringing him into court, if in session, to be dealt with as in other cases of contempt; and the court shall also take all necessary measures to secure and indemnify the plaintiff against damages in the premises.

§8068. If Court Not in Session Bond Shall Be Given or Person Committed. §168. If the court is not in session, the officer making the arrest shall cause the person to enter into a bond, with surety, to be approved by the officer, conditioned that he personally appear in open court whenever his appearance shall be required, to answer such contempt, and that he will pay to the plaintiff all his damages and costs occasioned by the breach of the order; and in default thereof, he shall be committed to the jail of the county until he shall enter into such bond with surety, or be otherwise legally discharged. L. '91 97.

§8069. Motions to Dissolve. §169. Motions to dissolve or modify injunctions may be made in open court, or before a judge of the superior court, at any time after reasonable notice to the adverse party. L. '91 74.

§8070. Judgment Enjoined and Dissolved—Damages. §170.—170. When an injunction to stay proceedings after judgment for debt or damages shall be dissolved, the court shall award such damages not exceeding ten per cent. on the judgment, as the court may deem right, against the party in whose favor the injunction issued.

No attorney fees if injunction rightful and no motion to dissolve, *Puget Sound, etc., Pilots and Masters v. Aetna, etc. Co.* 97 W. 413. No attorneys fees in unsuccessful attempt to dissolve injunction, though plaintiff dismisses injunction, *Thompson v. Benson* 41 W. 70.

§8071. Judgment for Realty Enjoined and Dissolved—Damages. §171.—171. If an injunction to stay proceedings after verdict or judgment in an action for the recovery of real estate, or the possession thereof, be dissolved, the damages assessed against the party obtaining the injunction, shall include the reasonable rents and profits of the lands recovered, and all waste committed after granting injunction.

Injunction ousting party entitled to become tenant in common is rightful in default of payments, *Yarwood v. Cedar Canyon Etc. Co.* 37 W. 56.

Measure of damages where tenant enjoined from removing building would be loss in balance and interest, *Ridpath v. Merriam*, 22 W. 311.

§8072. Reinstatement After Dissolution. §172.—172. Upon an order being made dissolving or modifying an order of injunction, the plaintiff may move the court to reinstate the order, and the court may, in its discretion, allow the motion, and appoint a time for hearing the same before the



court, or a time and place for hearing before some judge thereof, and upon the hearing, the parties may produce such additional affidavits or depositions as the court shall direct, and the order of injunction shall be dissolved, modified, or reinstated, as the court or judge may deem right. Until the hearing of the motion to reinstate the order of injunction, the order to dissolve or modify it, shall be suspended.

§8073. **Orders in Open Court or Chambers.** §173.—173. The judge of the superior court shall have power to make every order in vacation which, by the provisions of this chapter, may be made by the court in term time.

AN ACT concerning actions to enjoin collection of taxes, and actions for recovery of property sold for taxes. Approved February 2, 1888. Laws '88 p 43.

§8074. **Injunction, Taxes to Be Paid.** §1. Hereafter no action or proceeding shall be commenced or instituted in any court of this State to enjoin the sale of any property for taxes, or to enjoin the collection of any taxes, or for the recovery of any property sold for taxes, unless the person or corporation desiring to commence or institute such action or proceeding, shall first pay, or cause to be paid, or shall tender to the officer entitled under the law to receive the same, all taxes, penalties, interest, and costs justly due and unpaid from such person or corporation, on the property sought to be sold or recovered.

Does not apply if property sold not liable for tax, *Hill v. Calkins* 91 W. 634.

Officer stating tender would be refused does not exclude failure to make same, *Old Republic Co. v. Ferry County*, 69 W. 600.

Tender excused where defendant asserts absolute ownership, *Gould v. Stanton* 54 W. 363.

Tender of taxes in action to cancel tax deed not required if tender would be refused, *Pillsbury v. Beresford* 58 W. 656.

Tender in action to set aside deed need not be kept good—proof when tender waived, *Craver v. Mossbach* 57 W. 662.

Tender of taxes only in proceeding to vacate void judgment—presumption of service in void summons, *Holly v. Munro* 55 W. 311.

On appeal amendment of complaint will be presumed where tender and payment is shown, *Coughlin v. Holmes* 53 W. 692.

Tender is condition precedent—failure to make finding not fatal, *Thompson v. Emerson* 55 W. 138.

Tender necessary in federal court—state court followed—judgment conclusive—entry on day of return, *Wilfong v. Ontario Land Co.* 171 Fed. 51, overruling *id.* 162 Fed. 999.

Asserting title waives tender, *Gould v. Knox* 53 W. 248.

Payment to treasurer does not satisfy statute, *Ryno v. Snider* 49 W. 421.

Tender necessary, *Ontario Land Co. v. Yordy* 44 W. 239.

Action by mortgagor against mortgagee to reform absolute deed and against tax title tender not necessary, *Shepard v. Vincent* 38 W. 493.

Tender of amount due or legal or that plaintiff considers justly due and offer to pay more sufficient, *Landes Estate Co. v. Clallam County* 19 W. 569; *Ward v.*

*Huggins* 7 W. 617; *Merritt v. Corey* 22 W. 444; *Lewiston Water Co. v. Asotin County* 24 W. 371.

Tender of amount, as near as can be ascertained, with readiness to pay more if necessary, is sufficient, *State ex rel. McClaine v. Reed* 29 W. 383.

Railroad right of way assessed to owner of land such owner entitled to reduction in action to enjoin collection, *Coolidge v. Pierce County* 28 W. 95.

Tender not necessary when action, as in quitting title is not for the purpose of preventing the collection thereof, *Miller v. Pierce County* 28 W. 110.

If tax illegal or overvaluation fraudulent party not limited to equalization and appeal therefrom, *Lewiston Water Co. v. Asotin County* 24 W. 371; *Miller v. Pierce County* 28 W. 110.

In the absence of finding that assessment was fair when it is alleged that assessor was unfair conclusion of law will be treated as finding, *Coolidge v. Pierce County* 28 W. 95.

Courts have power to enjoin illegal tax on realty and remove cloud, *Northwestern Lumber Co. v. Chehalis County* 24 W. 626.

Mere irregularity will not give relief tax must be void, *Noyes v. King County* 18 W. 417.

Injunction may be maintained though statute provides defense may be made in action by county, *Benn v. Chehalis County* 11 W. 134.

Tender not necessary if tax void or tax officers assert they will not accept less than full amount, *First Nat. Bank v. Hungate* 62 Fed. Rep. 548.

Remedy by equalization need not be exhausted before action can be brought, *id.*

§8075. **Payment Must Be Pleaded.** §2. That in all actions to enjoin the sale of any property for taxes, in all actions to enjoin the collection of any tax, and in all actions for the recovery of any property sold for taxes, the complainant must state and set forth specially in his complaint, the tax that is justly due with penalties, interest and costs, the tax alleged to be

illegal, and point out the illegality thereof, that the taxes for that and previous years have been paid; and when the action is for the recovery of lands or other property sold for taxes against the person or corporation in possession thereof that all taxes, penalties, interest and costs paid by the purchaser at tax-sale, his assignees or grantees have been fully paid, or tendered, and payment refused.

Non-suit if tender not made, *Nunn v. Morgan* 38 W. 528.

Stewart 52 W. 513.

Amount of tender when sale to county,

What is sufficient tender, *McManus v. Young v. Droz* 38 W. 648.

**§8076. Above Provisions Additional.** §3. That the provisions of this act shall be construed as imposing additional conditions upon the power of the court or judge in granting injunctions to those already imposed, and of imposing additional conditions upon the complainant in actions for the recovery of property sold for taxes.

## JUDGMENTS.

Confession of judgment §8102.

Default judgment §8109.

Entry of judgments §8081.

Foreign judgments, suits on §7997.

Interest rate §3160.

Irrigation, enforcement of decrees respecting use of water §3372.

Lien of §8111.

Criminal judgments are liens §9303.

Mortgage foreclosure, judgments, etc. §8202.

Non-suit §8122.

Supplementary—AN ACT defining motions and orders. Approved February 13, 1897. Laws '97 p 10.

**§8077. Motions and Orders Defined.** §1. Every direction of a court or judge, made or entered in writing, not included in a judgment, is denominated an order. An application for an order is a motion.

Judgments in special proceedings, §7416; assignment may be recorded, §8120, and execution issue, §7841.

Enforcement of orders, §§7829, 7442.

Vacation or modification of judgment, §8130.

A motion to strike a motion will not be

**§8078. Judgment Defined.** §283.—283. A judgment is the final determination of the rights of the parties in the action.

Presumption in favor of judgment is stronger than that arising from erroneous instruction, *Morgan v. Bankers Trust Co.*, 63 W. 476.

Final judgment controls and supersedes prior orders, *Cannon v. Snipes* 24 W. 166.

Party may have judgment show it is for community debt, *Allen v. Chambers* 18 W. 341.

Void judgment only is subject to collateral attack, *Kizer v. Caufield* 17 W. 417.

A valid judgment negatives all defenses, *Isensee v. Austin* 15 W. 352.

Judgment or order can not reach one not a party to the action, *Madison v. Madison* 1 W. T. 60.

Nunc pro tunc orders to be made only in furtherance of justice, *Hays v. Miller* 1

**§8079. Judgment for Any of the Parties—Between Parties Recovering.** §284.—284. Judgment may be given for or against one or more of several plaintiffs and for or against one or more of several defendants; and it may, when the justice of the case requires it, determine the ultimate rights of the parties on each side, as between themselves.

Trustees and bondholders made parties in action to enjoin sale on execution, *Huxtable v. Berg* 28 W. 617.

Orders and judgments defined—against whom taken §8077.

Partial judgment when part of complaint admitted, etc. §8420.

Realty, conveyed by commissioner §8094.

Registration of land titles §5751.

Revival of §8125.

Rules of superior courts §8431e.

Submitted cases §8127.

Vacation of §8130.

Default, when §8110.

allowed, *Mann v. Young* 1 W. T. 454.

In equity party must obey part of judgment against him to compel other party to obey, *Smith v. Smith* 18 W. 158.

Judgment weher no service is had is properly vacated within one year on motion, *Sturgiss v. Dart* 23 W. 244.

W. T. 143.

Record showed verdict for defendant and order execution to issue against plaintiff for costs, held, valid record, *Huntington v. Blakeley* 1 W. T. 111.

Judgment going beyond issues unwarranted, *American etc., Assn. v. Farmers Ins. Co.*, 11 W. 619; but see *State ex rel. Weidert v. Sup. Ct.*, 36 W. 81.

Person not technically party to action bound by judgment if he participated in defense, *Douhitt v. MacCulsky*, 11 W. 60; *Shoemaker v. Finlayson*, 22 W. 12.

Decree voidable but not void where court had jurisdiction of parties and subject matter, *Jones v. Sander* 2 W. 329.

Cited 74 W. 477.



the contractor, Maher & Co. v. Fernandis, 70 W. 250.

In an action to foreclose a lien a co-defendant cannot make cross-complaint

against another for the conversion of the property, Hill v. Frink 11 W. 562.

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**§8080. Judgment as to One or More of Several Defendants. §285.—285.**

In an action against several defendants, the court may in its discretion, render judgment against one or more of them, whenever a several judgment is proper, leaving the action to proceed against the others.

Where only one of two partners is served, error to give personal judgment against both, McCoy v. Bell, 1 W. 504.

goes to trial, new trial should be granted to both, Ex parte Lowman & Hanford Co., 2 W. 427.

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#### OF THE MODE OF TAKING AND ENTERING JUDGMENTS.

**§8081. Entry of Judgment—New Trial. §301.** When a trial by jury has been had, judgment shall be entered by the clerk immediately in conformity to the verdict, and a transcript of said judgment may be immediately filed in the office of the clerk of the superior court in the manner provided by law. Provided, however, that if a motion for a new trial shall be filed, execution shall not be issued upon said judgment until said motion shall be determined: And, provided further, That the granting of a motion for a new trial shall immediately operate as the vacation and setting aside of said judgment. L. '03 285.

Does not apply to clerks minute entry of nonsuit granted — formal judgment dates appeal, Bath v. Harris 95 W. 166.

Joint judgment against divorced wife for community debt is error, McLean v. Burginger 100 W. 570.

Entry of judgments—costs (court rules) §8431t.

Interest rate, §3160.

Lien of judgments, §8111; revival, §8125.

Executions, §7827; satisfaction of record, §8117.

Clerks entry held sufficient—new trial or motion to vacate only procedure—non obstante veredicto error, Forsyth v. Dow 81 W. 137; Boyce v. C. M. & S. P. R. Co. 82 W. 204; Carkonen v. Columbia & P. S. R. Co. 89 W. 104.

Judgment creditors acquired a valid lien on debtors' real estate from entry of judgment, Konnerup v. Milspaugh, 70 W. 415.

When judgment not entered at once, nolle prosequi as to one of defendant joint tort feorsors does not release others, Ronald v. Pacific Traction Co., 65 W. 430.

Requirement of immediate entry does not destroy extension of time for motion for new trial, McAllister v. Seattle B. & M. Co. 44 W. 179.

After dismissal of case on defendant's motion and entry by clerk court properly in formal judgment granted defendant affirmative relief, Gould v. Austin 52 W. 457.

Failure of clerk to collect fees does not affect entry of judgment, Chilott v. Globe Nav. Co. 49 W. 302.

Statute is directory and judgment not entered immediately is good entry, Harris v. Fidalgo Mill Co. 38 W. 169.

Judgment entered by the court of its own motion is irregular, Hennesy v. Taco-

ma etc. Co. 33 W. 423.

Action against husband and community, only husband's liability submitted to jury, judgment against community bad, Swenson v. State 36 W. 318.

Error of clerk in making judgment filed before it was signed is immaterial, Warner v. Miner 41 W. 98.

Quare: Does motion for new trial suspend entry of judgment? Port Townsend Nat. Bank v. Weymouth 11 W. 412.

Entry occurs when judgment filed rather than when spread on records, Quareles v. Seattle 26 W. 226.

Judgment not entered in time is not void, Brown v. Porter 7 W. 327.

Judgment entered at time of deciding motion for new trial by succeeding judge is valid, Raub v. Scholl 19 W. 30.

Entry of judgment six months after rendition is valid, West Philadelphia T. & T. Co. v. Olympia 19 W. 150.

Copy of judgment need not be served after it is filed, Western Security Co. v. Lafleur 17 W. 406.

Entry of judgment immediately after findings and conclusions is not error, Kinkade v. Witherop 29 W. 10.

Nunc pro tunc judgment signed and entered two years after it was announced, bar against revival runs from time judgment was announced—order of court can not affect case, Barthrop v. Tucker 29 W. 666.

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Court may sign judgment on day of rendition without notice, White Crest Canning Co. v. Sims 30 W. 374.

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**§8082. Judgment May Be Given for Defendant. §303.—303.** If a set-off established at the trial, exceed the plaintiff's demand so established, judgment for the defendant shall be given for the excess; or if it appear that the defendant is entitled to any affirmative relief, judgment shall be given accordingly.

**§8083. Judgment in Replevin. §304.—304.** In an action to recover the possession of personal property, judgment for the plaintiff may be for the possession or value thereof, in cases a delivery cannot be had, and damages for the detention. If the property has been delivered to the plaintiff, and the defendant claim a return thereof, judgment for the defendant may be for a return of the property, or the value thereof, in case a return cannot be had, and damages for taking and withholding the same.

Replevin will not lie against co-owner. *v. Meerwaldt* 8 W. 630.  
 American Packing Co. *v. Luketa* 98 W. 6. Judgment that "plaintiff do have and recover of and from the defendant the sum of \$330" is erroneous, *Hall v. Law Guarantee & T. Soc.* 22 W. 306.  
 Will partial return of property satisfy judgment pro tanto—action on redelivery of \$330. *Hallidie Mach. Co. v. Whidby Island* Co. 73 W. 403.  
 Does not authorize judgment against sureties in bond given to secure possession, *Replevin* 88421: verdict in. §8527.

**AN ACT** relating to the verdicts of juries and judgments entered thereon, declaring the effect of verdicts, and repealing section 8081 Pierce's Code, 431 Remington & Ballinger's Annotated Codes and Statutes of Washington. L. '21 ch. 65.

**§8081. Entry of Judgment—New Trial, etc.—Notice of Motions. §1.** In any action tried by jury in which a verdict is returned, judgment in conformity with the verdict may be entered by the court at any time after two days from the return of such verdict. Any motion for judgment notwithstanding the verdict or any motion for a new trial, or any motion attacking the verdict for other causes, shall be served on the adverse party and filed with the clerk of the court within two days after the return of the verdict, and no judgment shall be entered in the cause until after the disposition of such motion. The judgment shall be in writing, signed by the judge of the court in which the action is pending, and shall be filed with the clerk and recorded in the journal of the court.

**§8081-1. Verdict Entered Forthwith—Lien. §2.** The clerk on the return of a verdict shall forthwith enter the same in the execution docket, specifying the amount thereof, and the names of the parties to the action and the party or parties against whom the verdict is rendered; such entry shall be indexed in the record index and shall conform as near as may be to entries of judgments required to be made in such execution docket. On the entry of such verdict as herein provided, the same shall be notice to all the world of the rendition thereof, and any person subsequently acquiring title to or a lien upon the real property of the party or parties

**§8087. Execution Docket. §307.—307.** Every clerk shall keep in his office a well-bound book, to be called the execution docket, which shall be a public record, and open during the usual business hours, to all persons desirous of inspecting it.

**§8088. Contents of Execution Docket. §310.—310.** He shall leave space on the same page, if practicable, with each case, in which he shall enter, in the order in which they occur, all the proceedings subsequent to the judgment in said case, until its final satisfaction, including the time when and to what county the execution is issued, and when returned, and the return or substance thereof. When the execution is levied on personal property, which is returned unsold, the entry shall be; "Levied (noting the date) on property not sold." When any sheriff shall furnish the clerk with a copy of any levy upon real estate on any judgment, the minutes of which are entered in his execution docket, the entry, shall be; "Levied upon real estate," noting the date and shall refer to the page upon the book of levies where the same is entered, as is hereinafter provided. When any execution issued to any other county is returned, levied upon real estate in such county, the entry in the docket shall be: "Levied on real estate of \_\_\_\_\_ in \_\_\_\_\_ county," noting the date, county, and defendant whose estate is levied upon, and when the money is made, or any part thereof, the amount and time when made shall be entered; also when a writ of error has been taken, or the judgment is appealed, modified, discharged or in any manner satisfied,



the contractor, *Maier & Co. v. Fernandis*, 70 W. 250.

In an action to foreclose a lien a co-defendant cannot make cross-complaint

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Requirement of immediate entry does not destroy extension of time for motion for new trial, *McAllister v. Seattle B. & M. Co.* 44 W. 179.

After dismissal of case on defendant's motion and entry by clerk court properly in formal judgment granted defendant affirmative relief, *Gould v. Austin* 52 W. 457.

Failure of clerk to collect fees does not affect entry of judgment, *Chilott v. Globe Nav. Co.* 49 W. 302.

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Judgment entered by the court of its own motion is irregular, *Hennesy v. Taco-*

ma etc. Co. 33 W. 423.

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Entry occurs when judgment filed rather than when spread on records, *Quareles v. Seattle* 26 W. 226.

Judgment not entered in time is not void, *Brown v. Porter* 7 W. 327.

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Court may sign judgment on day of rendition without notice, *White Crest Canning Co. v. Sims* 30 W. 374.

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Judgment that "plaintiff do have and recover of and from the defendant the sum of \$330" is erroneous, *Hall v. Law Guarantee & T. Soc.* 22 W. 306.

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the contractor, Maher & Co. v. Fernandis, 70 W. 250.

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#### OF THE MODE OF TAKING AND ENTERING JUDGMENT

against whom the verdict is returned shall be deemed to have acquired such title or lien with notice, and such title or lien shall be subject and inferior to any judgment afterwards entered on the verdict.

**§8081-2. Entry in Other Counties. §3.** The clerk shall, on request and at the expense of the party in whose favor the verdict is rendered, or his attorney, prepare an abstract of such verdict in substantially the same form as an abstract of a judgment and transmit such abstract to the clerk of any court in any county in the state as directed, and shall make a note on the execution docket of the name of the county to which each of such abstracts is sent. The clerk receiving such abstract shall, on payment of a fee of fifty cents therefor, enter and index the same in the execution docket in the same manner as an abstract of judgment. On the entry thereof the same shall have the same effect in such county as in the county where rendered.

**Record of Discharge.** Whenever the verdict, or any judgment rendered thereon, shall cease to be a lien in the county where rendered, the clerk of the court shall on request of anyone, and the payment of the cost and expense thereof, certify that the lien thereof has ceased, and transmit such certificate to the clerk of any court to which an abstract was forwarded, and such clerk receiving the certificate, on payment of a fee of fifty cents therefor, shall enter the same in the execution docket, and then and thereupon the lien of such verdict or judgment shall cease. Nothing in this act shall be construed as authorizing the issuance of an execution in any other county than that in which the judgment is rendered.

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Will partial return of property satisfy judgment *protanto*—action on redelivery bond, *Hallidie Mach. Co. v. Whidby Island Co.* 73 W. 403.

Replevin, §8421; verdict in, §8527.

Judgment should be for plaintiff for possession or in case that can not be had for value with damages, *Seattle National Bank*

Judgment that "plaintiff do have and recover of and from the defendant the sum of \$330" is erroneous, *Hall v. Law Guarantee & T. Soc.* 22 W. 306.

Does not authorize judgment against sureties in bond given to secure possession, *Eldson v. Woolery*, 10 W. 225.

Cited 92 W. 654.

**§8084. Judgments Entered by Clerk and Be Dennite. §305.—305.** All judgments shall be entered by the clerk, subject to the direction of the court in the journal, and shall specify clearly the amount to be recovered, the relief granted, or other determination of the action.

Interlocutory order may be vacated before entry if cause reserved, *State ex rel. Brown v. Brown* 31 W. 397.

Slight error in date of judgment immaterial, *Warner v. Miner*, 41 W. 98.

**§8085. Judgment Roll. §3. Immediately after entering the judgment, the clerk shall attach the following papers in the case, which shall constitute the judgment roll:**

1. If the complaint has not been answered by any defendant, and no pleading has been filed by an intervenor, he shall attach together in the order of their filing, issuing, and entry, the complaint, summons, and proof of service, and a copy of the entry of judgment.

2. In all other cases he shall attach together in like manner the summons and proof of service, the pleadings, bill of exceptions, all orders relating to change of parties, together with a copy of the entry of judgment, and all other journal entries or orders in any way involving the merits and necessarily affecting the judgment.

**§8086. Indorsements on Judgment Roll. §4.** In all cases, the clerk shall attach upon the outside of the judgment roll a blank sheet of paper, upon which he shall indorse the name of the court, the title of the action, for whom judgment was given, and the amount or nature thereof, and the date of its entry.

**§8087. Execution Docket. §307.—307.** Every clerk shall keep in his office a well-bound book, to be called the execution docket, which shall be a public record, and open during the usual business hours, to all persons desirous of inspecting it.

**§8088. Contents of Execution Docket. §310.—310.** He shall leave space on the same page, if practicable, with each case, in which he shall enter, in the order in which they occur, all the proceedings subsequent to the judgment in said case, until its final satisfaction, including the time when and to what county the execution is issued, and when returned, and the return or substance thereof. When the execution is levied on personal property, which is returned unsold, the entry shall be; "Levied (noting the date) on property not sold." When any sheriff shall furnish the clerk with a copy of any levy upon real estate on any judgment, the minutes of which are entered in his execution docket, the entry, shall be; "Levied upon real estate," noting the date and shall refer to the page upon the book of levies where the same is entered, as is hereinafter provided. When any execution issued to any other county is returned, levied upon real estate in such county, the entry in the docket shall be: "Levied on real estate of \_\_\_\_\_ in \_\_\_\_\_ county," noting the date, county, and defendant whose estate is levied upon, and when the money is made, or any part thereof, the amount and time when made shall be entered; also when a writ of error has been taken, or the judgment is appealed, modified, discharged or in any manner satisfied,



the facts in respect thereto shall be entered. The parties interested may also assign or discharge such judgment on such execution docket. When the judgment is fully satisfied in any way, the clerk shall write the word "satisfied," in large letters across the face of the entry of such judgment.

**§8089. Book of Levies. §313.—313.** The clerk shall also keep in his office a well bound book, to be called a book of levies, which shall be a public record and open during the usual business hours to all persons desirous of inspecting the same, in which he shall enter all levies upon real estate in his county, when delivered to him by the sheriff, as provided by law. An alphabetical index shall be prefixed to the book of levies, containing the names of all persons upon whose real estate such levies have been made, and when such levies are discharged in any manner, an entry thereof shall be made in the margin of the book of levies where the levy is recorded.

**§8090. Defendant Not Served May Be Made Liable. §314.—314.** When a judgment is recovered against one or more of several persons jointly indebted upon an obligation, by proceeding as provided in section sixtv-eight of this act, [§8449] such defendants who were not originally served with the summons, and did not appear to the action, may be summoned to show cause why they should not be bound by the judgment, in the same manner as though they had been originally served with the summons.

Defendant jointly liable but not included in judgment cannot be summoned on judgment, *Nolan v. McNamee* 82 W. 585.

Contribution on execution, §7902.

Procedure when all defendants not served, §8449.

Entry of judgments, §8081.

Revival of judgments, §8125.

Money judgments in criminal cases are liens, §9303.

Award of arbitrators affirmed is lien, §7349.

Judgment ceases to be lien after six years, §8164.

Judgment against ward is not lien, §9910; nor against executor or administrator, §9839.

Receivership in proceedings supplementary holds property by filing order, §7958; judgment appealed from, §8121.

**§8091. How Defendant Not Served to Be Summoned. §315.—315.** The summons, as provided in the last section, must describe the judgment, and require the person summoned to show cause why he should not be bound by it, and must be served in the same manner, and returnable within the same time, as the original summons. It is not necessary to file a new complaint.

**§8092. Affidavit of Amount Due. §316.—316.** The summons must be accompanied by an affidavit of the plaintiff, his agent, representative or attorney, that the judgment or some part thereof, remains unsatisfied and must specify the amount due thereon.

**§8093. Answer of Defendant. §317.—317.** Upon the service of such summons and affidavit the defendant may answer, within the time specified therein, denying the judgment, or setting up any defense which may have arisen subsequently to the taking of the judgment, or he may deny his liability on the obligation upon which the judgment was rendered; except a discharge from such liability by the statute limitations.

Cited 82 W. 585.

**§8093a. Pleadings. §318.—318.** If the defendant in his answer, deny the judgment, or set up any defense which may have arisen subsequently, the summons with the affidavit annexed and the answer, constitute the written allegations in the case; if he deny his liability on the obligation upon which the judgment was rendered, a copy of the original complaint and judgment, the summons with the affidavit annexed, and the answer, constitute such written allegations.

**§8093b. Trial and Judgment. §319.—319.** The issue formed may be tried as in other cases, but, when the defendant denies in his answer, any liability on the obligation upon which the judgment was rendered, if a verdict be found against him, it must not exceed the amount remaining unsatisfied on such original judgment, with interest thereon.

**AN ACT** relating to the rendition of judgments against sureties on cost bonds filed in any court. Approved March 17, 1909. L. '09 p 633.

**§8093c. Entry Against Surety. §1.** Whenever any bond or undertaking for the payment of any costs to any party shall be filed in any action or other legal proceeding in any court in this state and judgment should be rendered for any such costs against the principal on any such bonds or against the party primarily liable therefor in whose behalf any such bond or undertaking has been filed, such judgment for costs shall be rendered against the principal on such bond or the party primarily liable therefor and at the same time also against his surety or sureties on any or all such bonds or undertakings filed in any such action or other legal proceeding.

Surety on cost bond must be served with notice of appeal, *Shippen v. Shippen* 91 W 610.

## **JUDGMENTS—COMMISSIONERS TO CONVEY REALTY.**

**§8094. When Commissioner May Be Appointed. §528.—528.** The several superior courts may, whenever it is necessary, appoint a commissioner to convey real estate:

1. When by a judgment in an action a party is ordered to convey real property to another, or any interest therein.

2. When real property, or any interest therein, has been sold under a special order of the court and the purchase money paid therefor.

Trustee to clear title, §7517.

punish for contempt for refusal, *Wright v.*

Court may direct party to convey and *Suydam* 79 W. 550.

**§8095. Requisites of Deed. §529.—529.** The deed of the commissioner shall so refer to the judgment authorizing the conveyance, that the same may be readily found, but need not recite the record in the case generally.

**§8096. Effect of Judgment—Deed. §530.—530.** A conveyance made in pursuance of a judgment shall pass to the grantee the title of the parties ordered to convey the land.

**§8097. Effect of Sale—Deed. §531.—531.** A conveyance made in pursuance of a sale ordered by the court, shall pass to the grantee the title of all the parties to the action or proceeding.

**§8098. Court Must Approve Deed. §532.—532.** A conveyance by a commissioner shall not pass any right until it has been examined and approved by the court, which approval shall be endorsed on the conveyance and recorded with it.

**§8099. Parties' Names Must Appear. §533.—533.** It shall be sufficient for the conveyance to be signed by the commissioner only, without affixing the name of the parties whose title is conveyed, but the names of the parties shall be recited in the body of the conveyance.

**§8100. Deed Shall Be Recorded. §534.—534.** The conveyance shall be recorded in the office in which by law it should have been recorded had it been made by the parties whose title is conveyed by it.

**§8101. Specific Performance by the Party. §535.—535.** In case of a judgment to compel a party to execute a conveyance of real estate the court may enforce the judgment by attachment or sequestration, or appoint a commissioner to make the conveyance.

## **JUDGMENTS—CONFESSION OF.**

**§8102. Defendant May Confess Judgment. §291.—291.** On the confession of the defendant, with the assent of the plaintiff or his attorney, judgment may be given against the defendant in any action before or after answer, for any amount or relief not exceeding or different from that demanded in the complaint.

Surety cannot confess judgment, §8471.

Confession in attachment suit does not waive attachment lien, *Schloss v. State Bank*, 4 W. 726.

Confession by husband does not bind

community realty unless on community debt, *Andrews v. Andrews* 3 W. T. 286.

§8107 distinguished, *Puget Sound Bank v. Levy*, 10 W. 499.



**§8103. Fiduciary or Public Officer May Confess Judgment.** §292.—292. When the action is against the state, a county or other public corporation therein, or a private corporation or a minor, the confession shall be made by the person, who, at the time, sustains the relation to such state, corporation, county or minor, as would authorize the service of a notice upon him; or in the case of a minor, if a guardian for the action has been appointed, then by such guardian. In all other cases, the confession shall be made by the defendant in person.

Actions by and against public corporations, §8393; against the State, §6260.

Summons when several defendants, §8449.

Judgment against defendants jointly liable, §8080.

Partner cannot confess judgment in tort,

Hoffman v. Spokane Jobbers Assn. 54 W. 179.

Confession by one partner is enforceable as to partnership property and property of partner making confession Bank of Shelton v. Willey 7 W. 535.

**§8104. Confession by One of Several Defendants.** §293.—293. When the action is upon a contract, and against one or more defendants jointly liable, judgment may be given on the confession of one or more defendants against all the defendants thus jointly liable, whether such defendants have been served or not, to be enforced only against their joint property, and against the joint and separate property of the defendant making the confession.

**§8105. Confession to be in Writing and Acknowledged.** §294.—294. The confession and assent thereto shall be in writing and subscribed by the parties making the same, and acknowledged by each before some officer authorized to take acknowledgments of deeds.

**§8106. Confession on Contingent Liability or Debt to Become Due.** §295.—295. A judgment by confession may be entered without action, either for money due or to become due, or to secure any person against contingent liability on behalf of the defendant, or both, in the manner prescribed by this chapter.

**§8107. Contents of Statement for Confession.** §296.—296. A statement in writing shall be made, signed by the defendant and verified by his oath, to the following effect:

1. It shall authorize the entry of judgment for a specified sum.
2. If it be for money due or to become due, it shall state concisely the facts out of which the indebtedness arose, and shall show that the sum confessed to be due, is justly due or to become due.
3. If it be for the purpose of securing the plaintiff against a contingent liability, it shall state concisely the facts constituting the liability, and show that the sum confessed therefor does not exceed the same.

Where debtor employs his own attorney to sue him for creditor the judgment is by confession and must conform to statute—consideration for note must be stated, Puget Sound Nat. Bank v. Levy 10 W. 499. Bona fides will not excuse compliance with the statute, id.

**§8108. Judgment to Be Entered and Execution Issue.** §297.—297. The statement must be presented to the superior court [or] a judge thereof, and if the same be found sufficient, the court or judge, shall endorse thereon an order that judgment be entered by the clerk, whereupon it may be filed in the office of the clerk, who shall enter a judgment for the amount confessed, with costs. Execution may be issued and enforced thereon in the same manner as upon judgments in other cases.

## JUDGMENTS—BY DEFAULT.

Forcible entry and detainer, default in Rule of superior courts §8431c. §7980.

**§8109. How Judgment by Default Taken.** §289.—289. Judgment may be had if the defendant fail to answer to the complaint as follows:

1. In any action arising on contract for the recovery of money only, the plaintiff may file with the clerk proof of personal service of the summons and complaint, on one or more of the defendants. The court shall thereupon

enter judgment for the amount claimed, against the defendant or defendants, or against one or more of the several defendants in the cases provided for in section 68 [§8449]. Where the defendant, by his answer, in any such action, shall not deny the plaintiff's claim, but shall set up a counter claim amounting to less than the plaintiff's claim, judgment may be had by the plaintiff for the excess of said claim over the said counter claim.

2. In other actions the plaintiff may, upon the like proof, apply to the court, after the expiration of the time for answering, for the relief demanded in the complaint. If the taking of an account, or of the proof of any fact be necessary, to enable the court to give judgment, or to carry the judgment into effect, the court may take the account or hear the proof, or may, in its discretion, order a reference for that purpose. Where the action is for the recovery of damages, in whole or in part, the court may order the damages to be assessed by a jury; or if to determine the amount of damages, the examination of a long account be necessary, by a reference, as above provided. If the defendant give notice of appearance in the action, before the expiration of the time for answering, he shall be entitled to five days' notice of the time and place of application to the court, for the relief demanded in the complaint.

3. In action where the service of the summons was by publication, the plaintiff, upon the expiration of the time for answering may, upon proof of service by publication, apply for judgment and the court must thereupon require proof of the demand mentioned in the complaint, and must require the plaintiff or his agent to be examined on oath, respecting any payments that have been made to the plaintiff, or to any one for his use on account of such demand, and may render judgment for the amount which he is entitled to recover, or for such other relief as he may be entitled to.

Denial of default for failure of answer to third amended complaint which was same as former pleading, *Matson v. Kennecott Mines Co.* 101 W. 12.

Judgment by defendant, §8482; prohibited in mandamus, §8191.

No default on oral pleadings in justice court, §9591.

Notice of motion for judgment, §8481.

Publication of summons, §8446.

Damages tried when judgment on pleadings, §8530.

Defendant may demand proof without formal answer, §8460.

Party has right to assume that plaintiff will not exceed rights, *Anderson v. Burgoyne* 60 W. 511.

After default defendant not entitled to notice of judgment, *General Lith. & P. Co. v. American Tr. Co.* 55 W. 401.

Judgment entered four years after default sustained, *Pierce v. National Bank etc.*, 44 W. 404.

Defendant's appearance before default taken is good, *Washington etc. Co. v. Cannel Coal Co.* 45 W. 462.

Allowance of appearance before default ruled on is discretionary, *Bardon v. Hughes* 45 W. 627.

Plaintiff responsible for proper procedure as in selecting jury—general law controls in selecting jury in condemnation case, *Oregon R. & Nav. Co. v. McCormick* 46 W. 45.

First default judgment had a second entered without notice, *Morrison v. Berlin* 37 W. 600.

Default is properly included in final judgment, *Warner v. Miner* 41 W. 98.

Where a defendant refuses to answer after demurrer overruled to a complaint for a relief against excessive taxation the court may enter judgment without testimony, *Citizen's Nat'l Bank v. Columbia*

*County* 23 W. 441.

Judgment by default after demurrer overruled is good when there is nothing to show that defendant was entitled to extension of time, *Ferguson v. Hoshi* 25 W. 665.

Motion to set aside default is discretionary—judgment without proof may be had as provided in subd. 1 only where summons and complaint have been served and proof of service filed with the clerk, *Spokane Falls v. Curry* 2 W. 541.

Practice of giving judgment on the pleadings on motion at the trial not sommended, the defendant should have opportunity to file amended answer, *Seattle Nat'l Bank v. Meerwaldt* 8 W. 630.

Mandamus will not lie to compel court to enter judgment subd. 3 until it is shown that all the conditions have been complied with and the court has refused to act without warrant, *State ex rel. Dushinberre v. Huner* 4 W. 651.

Where the answer does not deny material facts of the complaint plaintiff is entitled to judgment although a reply has been filed, *Port v. Karfit* 4 W. 369.

Where defendant refuses to answer after demurrer overruled the court is authorized to proceed to take evidence, *Cross v. Johnson* 20 W. 124.

Jury must be called to assess damages, *Baker v. Prewitt* 3 W. T. 595.

Equity will not relieve by injunction against judgment though there was good defense on ground of fraud, *Spokane Co-Operative Mining Co. v. Pearson* 28 W. 118.

Default prematurely taken may be objected to by another party whose rights depend on it, *Murray v. Guse* 10 W. 25.

Premature entry of default in foreclosure can not be collaterally attacked, *Belles v. Miller* 10 W. 259.

Judgment by default by judge at Seattle in cause pending at Port Townsend in 1875



held valid, *Murne v. Schwabacher* 2 W. T. 130.

Party in default can not complain on appeal that summons does not state nature

of the action, *Baker v. Prewitt* 3 W. T. 595.

Mistake of attorney in noting time of answer will warrant opening default, *Reitmeier v. Siegmund* 13 W. 624.

**§8110. Opening Default Before Final Judgment.** §290.—290. The court may, in its discretion, before final judgment, set aside any default, upon affidavit showing good and sufficient cause, and upon such terms as may be deemed reasonable.

Default judgment in five months, motion to vacate default eight months after default properly denied, *Hazeltine v. Rockey* 90 W. 248.

Rule of court may be waived—discretion—sickness as excuse, *Swasey v. Mikkelsen*, 65 W. 411.

Default judgment set aside where service made on person unfamiliar with legal procedure, *Spoar v. Spokane Turn Verein*, 64 W. 208.

Affidavits of merits not necessary in case of no service—no jurisdiction, no laches—corporation failing to file list of officers, *Lushington v. Seattle Auto etc. Club* 60 W. 546.

Opening is discretionary—publication void for time and statement of purpose of action, *Hays v. Peavey* 64 W. 78.

Default opened for misunderstanding between counsel, *Coleman v. Security Sav. Soc.* 57 W. 675.

Opening is in discretion of court, *Clauson v. Lawrence* 47 W. 369.

Judgment vacated for failure of attorneys to notify opponents of disposal of motion, *Douglas v. Badger State Mine* 41 W. 266.

Attorney by error noted last day of answer one day too late and attempted to serve demurrer but was informed that default was taken preceding day when in fact it was taken by attorney who passed him on way to court house, default was properly vacated, *Dalgardno v. Trumbull* 25 W. 362.

Default prematurely entered will be opened without affidavit of merits, *Hole v. Page* 20 W. 208.

Default should have been set aside, *Titus v. Larsen* 18 W. 145.

To set aside decree of foreclosure defendant must set up interest, *Western Security Co. v. Lafleur* 17 W. 406.

Default will not be set aside though answer has merit unless excuse is shown, *Haynes v. Schwartz Co.* 5 W. 433.

Remedy against default should be sought in court where entered before appeal, *Beles v. Carrol* 6 W. 131.

Absence of counsel from city is not reason for opening default, *Sanborn Vail & Co. v. Centralia Furn. Mfg. Co.* 5 W. 150.

Plaintiff's attorney came in twenty minutes after default entered, defendant's attorney consented to opening of default, refusal of court was error, *Bank of Commerce v. Warren* 8 W. 477.

Default is waived by service of papers on party defaulting, *Cornell Univ. v. Denny Hotel Co.* 15 W. 433.

Default properly set aside where parties settled and defendant paid claim, *McBride v. McGinley* 31 W. 573.

Where party not served but unauthorized attorney appears, judgment is nullity, *McEachern v. Brackett*, 8 W. 652. But want of authority in attorney must be clearly shown, *Turner v. Turner* 33 W. 118.

Where defendant was misled by plaintiff's attorney as to time of trial, and has defense on merits, judgments by default should be set aside *Bast v. Hysom*, 6 W. 170.

Where plaintiff twenty minutes late at trial, default should be set aside, *Bank of Commerce v. Warren*, 8 W. 477.

## JUDGMENTS—LIEN OF.

Award affirmed is lien §7349.

§8213.

Mortgage foreclosure deficiencies are lien Lien limited to six years §8163.

Substitute—AN ACT relating to the lien of judgments upon real estate, and repealing Sections 449 ('91 p 77 §5), 450, 455 (C81 §309, 753), 456, 457, ('90 p 97 §§1-2) and 460 (C81 §321) of Title 7, Chapter 15 of Volume 2 of the General Statutes and Codes of the State of Washington as arranged and annotated by William Lair Hill. Approved March 3, 1893. General Repeal. Laws '93 p 65.

**§8111. When Liens Commence.** §1. The real estate of any judgment debtor and such as he may acquire, shall be held and bound to satisfy any judgment of the district or circuit court of the United States, if rendered in this state, or of the superior or supreme court, or any judgment of a justice of the peace for the period of five (5) years from the day on which said judgment was rendered and such judgments shall be a lien thereupon to commence as follows: Judgments of the superior court of the county in which real estate of the judgment debtor is situated from the date of the entry thereof. Judgments of the district or circuit courts of the United States if rendered in this state, judgments of the supreme court. Judgments of

the superior court of any county other than the county in which said judgment was rendered, and judgments of a justice of the peace, from the time of the filing and indexing of a duly certified transcript or abstract of such judgments as provided by this act, with the county clerk of the county in which said real estate is situated.

Lien good against absolute deed as mortgage and option to purchase, *Searle v. Bird* 94 W. 21.

Alimony judgment is not lien unless decree so provides, *Seattle B. & M. Co. v. Talley* 59 W. 168.

Lien prior to subsequent purchasers of mortgagor making improvements, *Young v. Davis* 50 W. 504.

Absence of judgment debtor does not extend lien, *Hemen v. Rinehart* 45 W. 1.

Substituted by 81 §457 as to future contracts, *Seattle B. & M. Co. v. Donofrio* 59 W. 98.

Execution cannot issue on transcript, *Humphries v. Sorenson* 33 W. 563.

Decisions construing former law 8 W. 9; 11 W. 304; 16 W. 396; 19 W. 402; W. 29; 14 W. 25; 24 W. 707.

An unrecorded mortgage has priority over a subsequent judgment, *Dawson v. McCarthy* 21 W. 314.

As to the parties to a fraudulent conveyance a subsequent judgment is not a lien, *Preston-Parton Mill Co. v. Dexter Horton Co.* 22 W. 236.

Judgment lien will not attach to a mining claim, *Phoenix Mining Co. v. Scott* 20 W. 48.

Junior lien can not obtain priority over intermediate lien by garnishment of surplus proceeds of sale under senior lien,

**§8112. Justice's Judgment a Lien if Transcript Filed. §2.** Any judgment of any justice of the peace of any county in this state shall become a lien upon any real estate of the judgment debtor, and such a lien may acquire in that county wherein said judgment was rendered by the filing of a duly certified transcript from the docket of said justice in the county clerk's office of said county wherein said judgment was rendered, and upon such filing, said judgment shall become to all intents and purposes a judgment of said superior court of said county, said judgment of said justice of the peace shall become a lien upon the real estate of the judgment debtor and such as he may acquire in any county other than that in which the same was rendered by the filing in the office of the county clerk of that county a duly certified abstract of the record of said judgment from the office of the county clerk of that county in which the certified transcript of the said judgment of said justice of the peace was originally filed.

Construing former law 23 W. 546.

Justice's transcripts different counties, §9517.

Execution may issue on justice's judgment after transcript filed, *Grant v. Cole*

**§8113. Abstract of Judgment. §3.** An abstract of a judgment as provided for in this act shall contain:

First. The name of the party or parties in whose favor the judgment was rendered.

Second. The name of the party or parties against whom the judgment was rendered.

Third. The date of the rendition of the judgment.

Fourth. The amount for which the judgment was rendered and in the following manner, viz.: Principal, \$.....; interest, \$.....; costs, \$.....; total, \$.....

**§8114. Transcript Must Be Exact Copy of Justice's Judgment. §4.** A transcript of a judgment of a justice of the peace provided for by this act shall contain an exact copy of the judgment from the justice's docket.

Contents of justice's docket, §9638.

*Mayer v. Morgan* 26 W. 71.

Judgment lienor can not complain of fraudulent conveyance of property, *Potvin v. Denny Hotel Co.* 26 W. 309.

Devisee's debt to estate is prior to judgment lien, *Boyer v. Robinson* 26 W. 117.

Real interest may be shown regardless of record, *Book v. Willey* 8 W. 267.

Act has sufficient title to provide lien by justice's judgments, *Grant v. Cole* 23 W. 542.

Deficiency judgment in mortgage foreclosure is lien—names necessary in transcript, *Fuller & Co. v. Hill* 19 W. 400.

Judgment entered and mortgage for prior debt executed same day are equal, *Goetzinger v. Rosenfeld*, 16 W. 392.

Lien will not attach to conveyance by husband to wife before judgment for community debt, *Sawtelle v. Weymouth* 14 W. 21.

Land granted absolutely is subject to lien though consideration paid by third party, the grantee giving mortgages, *Woodhurst v. Cramer* 29 W. 40.

The filing of a transcript does not authorize the issuance of execution, *Murray v. Briggs* 29 W. 245.

General judgment in foreclosure of mortgage is lien but not as if simply decree in foreclosure, *Hays v. Miller* 1 W. T. 143.

23 W. 542.

Judgment is subject to direct attack in Superior Court, *Noerdlinger v. Huff* 31 W. 360.



**§8115. Record and Index by the Clerk.** §5. It shall be the duty of the county clerk to enter in his execution docket any duly certified abstract or transcript of any judgment of any of the courts mentioned in this act and he shall index the same in the same manner as judgments originally rendered in the superior court of the county of which he is clerk

**§8116. Indexes to Be Direct and Inverse—Open to Public Inspection.** §6. It shall be the duty of the county clerk to keep a proper record index both direct and inverse of any and all judgments abstracts or transcripts of judgments in his office and all renewals thereof and such index shall refer to each party against whom the judgment is rendered or whose property is affected thereby [which index] together with the records of said judgments shall be open to public inspection during regular office hours.

Statement not filed in time stricken, *Owen v. Casey* 48 W. 673.

**§8117. Entry of Satisfaction of Judgment on Clerk's Records.** §7. When any judgment shall be paid and satisfied, the satisfaction shall be noted upon the records thereof in the execution docket as satisfied, giving the date of such satisfaction, and when the same shall be signed by the judgment creditor or his attorney the lien thereof against said real estate shall be satisfied and discharged.

Satisfaction of judgments, §8088; against state, §6263; public corporations, §8396.

**§8118. Judgments on Auditor's Records Continue to Be Liens.** §8. All judgments which are liens upon real estate by reason of their having been filed in any county auditor's office shall continue to be liens thereupon in the manner now provided by law.

Supplementary—AN ACT relating to the filing and recording of transcripts of judgments rendered in this State by the District or Circuit Courts of the United States. Approved February 19, 1890. Laws '90 p 97.

**§8119. Entry of Satisfaction of Judgments on Auditor's Records.** §3. When the amount due on any judgment is paid off or satisfied in full, the plaintiff, or those legally acting for him, must acknowledge satisfaction thereof in the margin of the record of the judgment, or by the execution of an instrument in writing, referring to the judgment, acknowledged and filed in the office of the auditor or recorder in every county where the judgment is a lien. If he fail to do so within sixty days after having been requested in writing so to do, he shall forfeit to the defendant the sum of fifty dollars.

Supplementary—AN ACT relating to assignments and satisfactions of judgments. Approved February 13, 1897. Laws '97 p 10.

**§8120. Recording Assignments or Satisfaction of Judgment by Auditor or Clerk.** §1. Any assignment or satisfaction of judgment, or any certified transcript of such assignment or satisfaction, may be recorded in any county auditor's office or county clerk's office in which the judgment is of record, and from the time of filing for record shall be notice of such assignment or satisfaction.

Execution on assigned judgment, §7841.

**§8121. Appeal Does Not Affect Lien Except to Extend It—Lien on Personality.** §322.—322. An appeal to the supreme court, writ of error or stay of execution, shall not affect any existing lien; and in all cases of an appeal, or writ of error, the date of final judgment in the supreme court shall be the time from which said five years shall commence to run. Personal property shall only be held from the time it is actually levied upon.

Substituted §8163 as to future contracts, supreme court, *Whitworth v. McKee* 32 W. Seattle B. & M. Co. v. Donofrio 59 W. 98. 83.

Five years runs from final judgment in

## JUDGMENTS—OF NON-SUIT.

**§8122. When Non-Suit May Be Entered.** §286.—286. An action may be dismissed, or a judgment of non-suit entered in the following cases:

I. By the plaintiff himself, at any time, either in term time or in vacation, before the jury retire to consider their verdict, unless set-off be inter-

posed as a defense, or unless the defendant sets up a counter claim to the specific property or thing which is the subject matter of the action.

2. By either party, upon the written consent of the other.

3. By the court, when the plaintiff fails to appear on trial, and the defendant appears and asks for a dismissal.

4. By the court, when upon the trial and before the final submission of case, the plaintiff abandons it.

5. By the court, on the refusal or neglect of the plaintiff to make the necessary parties after having been ordered by the court.

6. By the court, on the application of some of the defendants, where there are others whom the plaintiff [fails] to prosecute with diligence.

7. By the court, for disobedience of the plaintiff to an order concerning the proceedings in the action.

8. By the court, upon motion of the defendant, when upon the trial, the plaintiff fails to prove a sufficient cause for the jury.

Voluntary nonsuit may be withdrawn before entry of judgment, *Albin v. Seattle* 98 W. 275.

Non-suit, §8482; for failure to give evidence, §7764.

Denial of nonsuit not waived by going to trial with no evidence for plaintiff, *Fraser v. Home Tel. & Tel. Co.* 91 W. 253.

Dismissal with bar of complaint for injunction against fraudulent force account in municipal work, is not error, *McGillivray v. Bremerton* 90 W. 394.

Judgment with findings for defendant—a judgment in bar is error *Cloukie v. Semple* 88 W. 534.

Error in refusing nonsuit waived if plaintiff goes to trial, *State ex rel Bradway v. De Mattos* 88 W. 35.

Motion for nonsuit waived if trial proceeded with and evidence sufficient, *Parker v. Washington Tug & B. Co.* 85 W. 575.

Nonsuit refused, judgment ~~non obstante~~ veredicto sustained, *Beck v. International Harvester Co.* 85 W. 413.

Refusal or failure to comply with order of court to make definite and certain one of several items does not warrant striking all, *Williams v. Lindenberger Packing Co.* 86 W. 292.

Motion may be urged on appeal, *Linck v. Matheson*, 63 W. 593.

Court has power to grant a voluntary dismissal without prejudice, *Williams v. Spokane*, 64 W. 484.

Motion waived by proceeding to trial, *Conner v. Seattle, R. & S. R. Co.* 56 W. 310.

Allowed after affirmative defense in consolidation action, *Curry v. Wilson* 57 W. 509.

Non-suit at any time before jury retires, *Fisk v. Tacoma Smelting Co.* 49 W. 514.

Stipulation dismissing without costs to either party is not bar—pendency of another action does not affect, *State Medical Board v. Stewart* 46 W. 79.

Error in refusing waived by proceeding to trial—demurrer to evidence, *Adams v.*

*Peterman Mfg. Co.* 47 W. 484.

Nominal damages only recoverable non-suit may be granted, *Storseth v. Folsom* 50 W. 456.

Non-suit was denied but after argument formal judgment properly entered granting non-suit, *Brown v. Northern Pac. R. Co.* 44 W. 1.

Title sought to be quieted against alleged fraudulent assignment of contract; answer alleged contract valid and prayed that title be quieted, non-suit not allowed, *Gray v. Granger* 48 W. 442.

Non-suit reversed judgment non obstante veredicto cannot be entered on retrial on same evidence, *O'Connor v. Force* 58 W. 215.

Dismissal "for want of equity" is bar—clerk's entry of non-suit, *Nunn v. Mather* 60 W. 484.

Directed verdict for failure of evidence is bar, not non-suit, *McKim v. Porter* 60 W. 270.

Judgment reciting non-suit cannot be shown to be on merits, *Alberg v. Campbell Lum. Co.* 60 W. 533.

Architects certificate a pre-requisite and impeached for fraud, defendant entitled only to non-suit, *Ilso v. Aetna Indemnity Co.* 55 W. 487.

Error in refusing waived by going to trial, *Cleary v. General Contracting Co.* 53 W. 254.

Judgment entered on motion of defendant that plaintiff "failed to establish injuries were the consequence" is bar, *McGuire v. Bryant Lum. Co.* 53 W. 425.

Plaintiff may take nonsuit at any time before case submitted—or allowed in supreme court error cannot be reviewed, *McPherson v. Seattle Elec. Co.* 53 W. 358.

Opening statement of counsel must show that there is no cause of action to warrant nonsuit, *Brooks v. McCabe & Hamilton* 39 W. 62.

Party must stand on motion for nonsuit in equity or it is waived, *Kane v. Kane* 55 W. 517.

Motion waived in equity case if trial pro-



ceeded with, *Lilly v. Eklund* 37 W. 532.

Plaintiff's testimony alone against several witnesses prevents nonsuit, *McCowan v. Northwestern Siberian Co.* 41 W. 675.

Nonsuit denied in equity case court may find for defendant and dismiss the action, *Hill v. Gardner* 35 W. 529.

Granting of motion for dismissal in equity designated a motion for nonsuit is not error, *O'Neill v. Ternes* 32 W. 528.

Non-suit for failure to prove corporate capacity is not bar, *Union Bank v. Nelson* 32 W. 208.

Plaintiff cannot dismiss after answer with demand of affirmative relief, *McKee v. McKee* 32 W. 247.

In either legal or equitable action plaintiff cannot dismiss when defendant demands affirmative relief, *Washington Nat'l Bank Bldg. Etc. Assn. v. Saunders* 24 W. 321; *Waite v. Wingate* 4 W. 324, overruled.

Court may dismiss action for failure of plaintiff to furnish amended bill of particulars, *Plummer v. Weil*, 15 W. 427.

After motion for dismissal by the plaintiff it is error to enter judgment for defendant on the pleadings, *Lowman v. West* 7 W. 407.

Nonsuit on ground of plaintiff's contributory negligence is a bar, *Bartlett v. Seehorn*, 25 W. 261.

Defendant to avail himself of motion to dismiss must stand upon it, *Scoland v. Scoland* 4 W. 118.

There is no statute regulating the dismissal of equitable actions by the voluntary act of the party, but the plaintiff may dismiss as in law, *Waite v. Wingate* 4 W. 324; *ler* 3 W. 636.

Nonsuit should not be granted for contributory negligence unless there cannot be two opinions, *Travers v. Ry. Co.* 25 W. 225.

Nonsuit does not make matters res judicata on which defendant should have had judgment but was erroneously refused by the court, *Bates v. Drake* 28 W. 447.

Trial court sustained in reopening case and allowing proof of service of notice to quit in unlawful detainer, *Carmack v. Drum* 27 W. 382.

Non-suit is error as when question of negligence is one of fact for the jury, *Burian v. Seattle Electric Co.* 26 W. 606.

Agent had authority to sell and receive purchase money but made false statements regarding foundation of a building, held plaintiff should have examined foundation—non-suit should be allowed, *Samson v. Beale* 27 W. 557.

When there is conflict in the evidence

§8123. **Otherwise on Merits.** §287.—287 In every case other than those mentioned in the last section, the judgment shall be rendered on the merits.

§8124. **Non-Suit Is Not Bar** §288.—288 When a judgment of non-suit is given, the action is dismissed; but such judgment shall not have the effect to bar another action for the same cause.

Dismissal for failure to prove case is bar, *Michel v. White*, 64 W. 341.

non-suit should be refused, *Latimer v. Barker* 25 W. 192.

Plaintiff may dismiss at any time if affirmative relief is not demanded by defendant—dismissal allowed after decree had been vacated, *Dane v. Daniel* 28 W. 155.

Non-suit will not be disturbed if there is any ground though court assigns insufficient ground, *Brennan v. Front Street Ry.* 8 W. 363.

When plaintiff has any evidence non-suit will not be granted, *Swadling v. Barneson* 21 W. 699.

Where there is any evidence non-suit should not be granted nor should verdict be disturbed, *Wulf v. Sullivan* 24 W. 306; *Sievers v. Dalles Etc. Nav. Co.* 24 W. 302.

Where there is any evidence as on question of agency to charge defendant non-suit will not be granted, *Morris v. Frye-Bruhn Co.* 20 W. 257.

Contradictory testimony by plaintiff will not incur non-suit, *Jose v. Stetson* 20 W. 648.

Where complaint was demurrable but proofs supplied non-suit should not be granted, *State ex rel. Jenkins v. Equitable Indem. Assn.* 18 W. 514.

Voluntary non-suit is too late after findings have been filed, *Herrick v. Niesz* 16 W. 74.

If proofs entitle plaintiff to relief pleadings should be considered amended and non-suit refused, *Murray v. Meade* 5 W. 693.

Non-suit is improper when there is evidence though it was improperly admitted, *Dutcher v. Howard* 15 W. 693.

Non-suit was proper in action for services when it was shown work was not alone at request of defendant though he was benefited, *Bunker v. Blair* 14 W. 106.

In trial by the court non-suit may be granted when there is fair preponderance of proof against plaintiff, *Lambuth v. Stetson & Post Mill Co.* 14 W. 187.

Evidence in the case though it is defendant's, should be considered in passing on non-suit, *Lost Lake Lumber Co. v. Smith* 29 W. 713.

Vacation of non-suit properly refused because applied for on account of counsel being engaged in other courts or absence of witness, *Spokane Etc. Copper Co. v. Colfelt* 30 W. 628.

Non-suit on testimony of physician called by plaintiff that condition after treatment might have been natural result from injury when second operation was necessary, *Sawdey v. Spokane Falls & N. Ry.* 30 W. 349.

## JUDGMENTS—REVIVAL OF.

**§8125. When Judgments May Be Revived—Procedure.** §323.—323. If any judgment shall remain unsatisfied in whole or in part, at the end of five years after the date of its rendition, the lien thereof may be revived and continued as in this section provided:

1. The judgment creditor, his assignee, or the party to whom said judgment is due and payable, shall file a motion with the clerk of the court where judgment is entered, to revive and continue the lien of the same, with leave to issue an execution. The motion shall state the names of the parties to the judgment, the date of its entry, the amount claimed to be due thereon, or the particular property of which the possession was thereby adjudged to such party remaining undelivered. The motion shall be subscribed and verified in the same manner as an original complaint.

2. At anytime after filing such motion, the party may cause notice to be served on the judgment debtor in like manner and with like effect as a summons; said notice shall be attached to a copy of said motion, by the clerk of the court, and be served by the sheriff or other officer as an original summons. It shall cite the judgment debtor to appear, and show cause why the said motion should not be allowed. The time in which the judgment debtor shall be required to appear, shall be the same as is prescribed for answer to a complaint, and the law applicable to service of a summons, shall apply to the service of such notice. In case the judgment debtor be dead, the notice may be served upon his legal representatives.

3. The judgment debtor, or in case of his death, his representatives, may file an answer or demurrer to such motion within the time allowed by law to answer a complaint, alleging any defense to such motion which may exist. If no answer be filed within the time prescribed, the motion shall be allowed as of course. The moving party may demur or reply to the answer. The pleadings shall be subscribed and verified, and the proceedings concluded as in original actions.

4. The word representatives in this section shall be deemed to include any or all of the persons in whose possession property of the judgment debtor may be which is liable to be taken and sold or delivered in satisfaction of the execution, and not otherwise.

5. The order shall specify the amount due upon such unsatisfied judgment for which execution is to issue, or the particular property, possession of which is to be delivered; it shall be entered in the journal and docketed as a judgment, and a final record shall be made of the proceedings in the same manner as a judgment.

Limitation of six years, §8164.

If contract prior to act limiting judgment to six years above section in force, *Kelleher v. Wells* 87 W. 323.

Revival may be had by direct action at law, *Meikle v. Cloquet* 44 W. 513.

Judgments on contracts prior to §8163 may be revived, *Howard v. Ross* 38 W. 527.

Revival before five years not good—execution quashed, *Tacoma Nat. Bank v. Sprague* 33 W. 285.

§8163 unconstitutional as to judgments prior to its passage. *Raught v. Lewis* 24

W. 47; *Palmer v. Laber* 23 W. 409.

The real parties at interest in the judgment are the proper parties to motion to revive, *Denio v. Benham* 24 W. 485.

A judgment ceases to be a lien after five years and may be revived within six years if purchasers intervene between expiration of lien and revival they take good title, *Brier v. Traders' Nat. Bank* 24 W. 695; *Packwood v. Briggs* 25 W. 530.

Execution sale after lien expired is void though the execution issued prior to its expiration, *Packwood v. Briggs* 25 W. 530.

Motion to revive is not commencement of an action, *Burns v. Connor* 1 W. 6.

**§8126. Proof for Revival—No Revival After Six Years.** §324. Such motion shall not be granted unless it be established by oath of the party, or other satisfactory proof, that the judgment, or some part thereof, remains unsatisfied. The order of the court granting such leave shall operate as a revival of the judgment for the amount found due at the time of such revival, and the same shall be and continue a lien upon real estate of the judgment debtor for a period of five years from and after the date of such order, in like manner with the original judgment: Provided. That a transcript



thereof shall, within twenty days, be filed in the office of the county auditor of the county where the lands lie of such judgment debtor, or said lien shall be suspended till such transcript be filed. Revived judgments shall bear the same interest and be in all respects similar to original judgments, as to lien and enforcement of collection: Provided, however, That no judgment shall be revived or continued unless proceedings for such revival or continuance shall be commenced within six years after the date of its rendition: Provided, further, That this act shall not apply to any judgment now in existence, until one year from the time this act takes effect. L. '91 165.

For the purposes of revival time runs judgment, and *nuc pro tunc* order of the court can not affect the case, *Barthrop v. Tucker* 29 W. 666.

28 W. 194.

Service of motion must be had within

Bar against revival runs from announcement rather than signing and entering of six years, *Hayton v. Beason* 31 W. 317.

## JUDGMENTS—ON SUBMITTED CASES.

§8127. **Statement of Facts—Affidavit of Real Controversy.** §298.—298. Parties to a question in difference, which might be the subject of a civil action may, without action, agree upon a case containing the facts upon which the controversy depends, and present a submission of the same to any court which would have jurisdiction if an action had been brought. But it must appear by affidavit that the controversy is real, and the proceedings in good faith, to determine the rights of the parties. The court shall thereupon hear and determine the case and render judgment thereon, as if an action were pending.

Evidence cannot be received if objection W. 177.

is made, *Leonardo v. Bunnell* 77 W. 495.

It is against public policy to occupy Party submitting case can not afterward courts with pretended litigation, *Connolly v. Cunningham* 2 W. T. 242.

object, claiming other party has other relief, *Wilkeson Coal Etc. Co. v. Driver* 9

§8128. **Judgment Shall Be Entered—Judgment Roll.** §299.—299. Judgment shall be entered in the judgment book, as in other cases, but without costs for any proceedings prior to the trial. The case, the submission and a copy of the judgment shall constitute the judgment roll.

§8129. **Execution—Appeal.** §300.—300. The judgment may be enforced in the same manner as if it had been rendered in an action, and shall be in the same manner subject to appeal.

## JUDGMENTS—VACATION OF.

§8130. **Grounds of Motion or Petition.** §436.—436. The superior court in which a judgment has been rendered, or by which, or the judge of which, a final order has been made, shall have power after the term at which such judgment or order was made, to vacate or modify such judgment or order:

1. By granting a new trial for the cause, within the time and in the manner, and for any of the causes prescribed by the sections relating to new trials.

2. By a new trial granted in proceedings against defendant served by publication only as prescribed in section sixty-seven [§8448].

3. For mistakes, neglect or omission of the clerk, or irregularity in obtaining a judgment or order.

4. For fraud practiced by the successful party in obtaining the judgment or order.

5. For erroneous proceedings against a minor person of unsound mind, when the condition of such defendant does not appear in the record, nor the errors in the proceedings.

6. For the death of one of the parties before the judgment in the action.

7. For unavoidable casualty, or misfortune; preventing the party from prosecuting or defending.

8. For error in a judgment shown by a minor, within twelve months after arriving at full age.

Divorce judgment, vacation refused because of applicants leaving the state for purpose of placing property beyond jurisdiction, *Hendrix v. Hendrix* 101 W. 535.

Only remedy after one year is by suit inequity, *State ex Nor. Pac. R. Co. v. Court* 101 W. 144.

Leave to proceed to vacate judgment granted by supreme court, *Kawabe v. Continental Life Ins. Co.* 98 W. 214.

Eminent domain judgment vacated and assignee of warrant bound, *Barker v. Seattle* 97 W. 511.

Judgment corrected only in manner provided by law, *McCaffrey v. Snapp* 95 W. 202.

Equity suit after time expired to vacate judgment prematurely entered, showing necessary, *Chehalis Coal Co. v. Laisure* 97 W. 422.

Vacation must be sought in county where rendered, *Rowe v. Silbaugh* 96 W. 138.

Vacation of divorce decree for fraud is independent action, *Anderson v. Anderson* 97 W. 202.

Judgment signed and handed to clerk with instructions to hold, entry by clerk vacated, *Hartford v. Stout* 102 W. 241.

New trial, §8225; courts always open, §8630.

Judgment showing defective service subject to collateral attack, *Teynor v. Heible* 74 W. 222.

Criminal intimacy of plaintiff with another woman is not ground for opening default when facts could have been shown in defense—discretion when one party has again married—no showing of plaintiff's residence, *Faulkner v. Faulkner* 90 W. 74.

Equity will not vacate judgment for perjury—fraud necessary, *Robertson v. Freebury* 87 W. 558.

Relief may, in proper case, be granted in equity, *State ex rel Prentice v. Superior Court* 86 W. 90.

Judgment construing nonintervention will cannot be vacated in collateral attack by co-ordinate court, *Bayer v. Bayer* 83 W. 430.

Divorce decree may be modified after entry—default in alimony does not prevent motion, *State ex rel Jones v. Superior Court* 78 W. 372.

Error of law not ground for vacation of judgment, appeal is remedy, *Morgan v. Williams* 77 W. 343.

Ex parte order discharging guardian void and statute does not run, *In re Sroufe's Estate* 74 W. 639.

No service of process is "irregularity," *Frieze v. Powell* 79 W. 483.

Ignorance of meaning of legal process cause for vacation of judgment, *Frieze v. Powell* 79 W. 483.

Judges may be changed, being a new proceeding, *Cooper v. Cooper* 83 W. 85.

Garnishment default must be set aside before interpleader on fund maintained, *Benjamin v. Ernest* 83 W. 59.

Motion too late after one year, *State ex rel Pacific Loan, etc., Co. v. Superior Court* 84 W. 392.

Judgment in criminal case cannot be modified by judge on his own motion, *State ex rel Lundin v. Superior Court* 90 W. 290.

Motion for newly discovered evidence may be made within one year—equity af-

terward, *Denny-Renton Clay Co. v. Sartori* 87 W. 545.

Vacation where no personal service limited to one year from judgment, *Bruhn v. Pasco Land Co.*, 67 W. 490.

Proceeding by motion sustained under the facts, *State v. Washington D. & I. Co.* 43 W. 508.

Judgment affirmed on appeal cannot be attacked in lower court for fraud, *Kath v. Brown* 53 W. 480.

Judgment on acceptance of service by defacto corporation officer set aside only by direct attack, *Seattle & N. R. Co. v. Bowman* 53 W. 416.

Equity will not vacate judgment after years of unexplained laches, *Washington Dredging etc. Co. v. State* 53 W. 346.

Motion to vacate denied is res judicata—no action in equity—mistake in remedy will not raise bar, *Bunch v. Pierce County* 53 W. 298.

Motion determined is res judicata—not vacated for mistake of attorney in dismissing appeal, *Meisenheimer v. Meisenheimer* 55 W. 32.

Divorce decree opened for fraud *Chaney v. Chaney* 56 W. 145.

Relief in equity after one year—default different than facts warranted, *Anderson v. Burgoyne* 60 W. 511.

Perjury four years before action to vacate decree not sufficient ground, *Eckert v. Schmitt* 60 W. 23.

Judgment of dismissal for want of prosecution vacated on terms of costs and more than statutory attorney fee, *Redding v. Puget Sound I. etc. Wks.* 44 W. 200.

Equity action to vacate judgment for want of proper process, must allege defense, *Brandt v. Little* 47 W. 194.

Modification of judgment to read as made is inherent in the court regardless of statute and not discretionary—remedy under any statute, *O'Bryan v. American etc. Co.* 50 W. 371.

Homestead, order setting aside final and vacated only by motion for new trial or petition, *In re McKeever's Estate* 48 W. 429.

Continuance allowed on terms, but voluntary dismissal taken and statute limitation had run, vacating dismissal in discretion, *Anderson v. Shields* 51 W. 463.

Judgment cannot be vacated for error of law—showing required after two years, *Warren v. Hirshberg* 52 W. 38.

Mistake of counsel corrected, *National Bank Com. v. Kilsheimer & Co.* 59 W. 460.

Vacation of judgment of dismissal for want of prosecution refused because of delay, *Hoffmeister v. Renton Co-operative Coal Co.* 40 W. 48.

Vacation of divorce decree for neglect of attorney properly denied, *Winstone v. Winstone* 40 W. 272.

Affidavit of merits not necessary to vacate judgment void for want of jurisdiction, *Bennett v. Maccabees* 40 W. 431.

Executors cannot vacate decree of divorce, *Dwyer v. Nolan* 40 W. 459.

Judgment in foreclosure sustained though sale made on different day than advertised where petition was filed seven years after the sale, *Terry v. Furth* 40 W. 493.



Judgment will not be vacated for error that may be corrected on appeal, *Snohomish Land Co. v. Blood* 40 W. 626.

Opening default judgment entered on personal service and motion pending for more than one year held abuse of discretion, *Moody v. Reichow* 38 W. 303.

Judgment regular will not be vacated on motion to quash service though summons defective, *Snider v. Badere* 39 W. 130.

Application by minors to vacate partition and foreclosures of guardian's mortgages denied—fraud—error—showing necessary, *Wilson v. Hubbard* 39 W. 671.

Order construing will on petition to sell lands to pay debts vacated only by statutory method, *In re Baker's Estate* 33 W. 79.

This section gives authority to superior court to vacate judgment of territorial court for fraud on minor in administration, *Ball v. Clothier* 34 W. 299.

Courts have authority aside from statute to vacate judgment for fraud or apparent error, *Ball v. Clothier* 34 W. 299.

Error of law cannot be corrected on petition to vacate judgment, *McInnes v. Sutton* 35 W. 382.

Husband's false representations held sufficient to vacate divorce—findings outside issues, *State ex rel. Weldert v. Superior Court* 36 W. 81.

Record defective but showing jurisdiction, motion to vacate on the record is demurrable, *Nolan v. Arnot* 36 W. 101.

Judgment valid on its face will not be vacated on motion and affidavit of want of service though affidavit not denied, *Scott v. Hanford* 37 W. 5.

Real parties at interest may be stipulated and such will be a substitution of the parties to the judgment, *Collins v. Kinnear* 37 W. 453.

Decree of adoption held good in habeas corpus though collateral attack is *res judicata*, *In re Clifford* 37 W. 460.

Judgment cannot be vacated by disregarding it and entering another, *Buffalo Pitts Co. v. Dearing* 37 W. 591.

Vacation of judgment because of mistake, surprise or excusable neglect is in discretion of the court—failure to pay taxes held not excusable and judgment not vacated, *Swanson v. Hoyle* 32 W. 169.

Final judgment of dismissal on hearing of interlocutory order is "regularity," *State ex rel. Hennessy v. Huston* 32 W. 154.

Affidavit of merits and tender of answer not necessary, *Wheeler v. Moore* 10 W. 309.

Is proper procedure to vacate judgment on promissory note not executed by defendant and want of service, *id.*

Law judgment entered in suit in equity will not be vacated—contractor in mechanic's lien foreclosure can not set up agreement of lienor not to hold him personally a second time in petition to vacate judgment—court may modify judgment and refuse to vacate it, *Tacoma Lumber Co. v. Wolff* 7 W. 478.

Prohibition will issue to prevent Superior Court from disturbing judgment, *State ex rel. Wolferman v. Superior Court* 8 W. 591; *State ex rel. Dodge v. Langhorne* 12 W. 582.

If cause not determined successor of judge may vacate erroneous orders, *Shepherd v. Gove* 26 W. 452.

Judgment can not be collaterally attacked for fraud by party to the action, *Peyton v. Peyton* 28 W. 278.

Judgment on the unauthorized appearance of an attorney will be vacated in foreclosure regardless of the rights of third parties, *McEachern v. Brackett* 8 W. 652.

Independent action will not lie for error, *Davis v. Fields* 9 W. 78.

Vacation of judgment is discretionary and will not be disturbed where all the facts are not before Supreme Court, *McCord v. McCord* 24 W. 529.

Judgment will not be vacated on grounds passed on for new trial—perjury as ground, *Friedman v. Manley* 21 W. 675.

Successor of judge may vacate judgment on same grounds it was refused when discretion was abused, *State ex rel. Rucker v. Superior Court* 18 W. 227.

Vacation of judgment vacates execution sale to plaintiff, *Benney v. Clein* 15 W. 581.

If first application should have been granted order granting second application on same grounds will not be reversed, *Clein v. Wandsneider* 14 W. 257.

Judgment entered by mistake will not be vacated unless wrongful or oppressive, *Northern Pacific Ry. v. Black* 3 W. 327.

Judgment of probate court providing for children omitted from will can not be disturbed after ten years, *Webster v. Seattle Trust Co.* 7 W. 642.

Action by trial court by permission of Supreme Court after judgment affirmed, *State ex rel. Post v. Superior Court* 31 W. 53.

Remedy is exclusive if grounds discovered in time—though petition separately docketed proceeding is in original action, *id.*

Petition to vacate order must show other reasons than those considered at the granting of the order, *Greene v. Williams* 13 W. 674.

Petition must be made within one year, *id.*

Quere: Are affidavits admissible, *Whidby Land Co. v. Nye* 5 W. 301.

Perjury unless it is the sole support of the judgment is not ground for vacating it—failure of adverse party to disclose facts that would defeat him is not ground for vacating judgment, *McDougall v. Walling* 21 W. 478.

Motion is proper remedy when want of service of summons is shown on the face of the record—on whom service of papers to vacate to be made—collateral attack of order vacating, *Sturgiss v. Dart* 23 W. 244.

Party applying must be party to the record, *Kuhn v. Mason* 24 W. 94.

Discretion of the court in granting motion or petition, *id.*

Errors reviewable by appeal can not be corrected, *id.*, *Chezum v. Claypool* 22 W. 498; *Roberts v. Shelton Etc. R. R. Co.* 21 W. 427; *Dickson v. Matheson* 12 W. 196.

No limitation of time if judgment void, *Boston Nat. Bank v. Hammond* 21 W. 158.

Is an independent action and petition should set forth facts fully, *id.*; *Morrison v. Morrison* 25 W. 466.

Petition by minor—sister not under dis-

ability not necessary party, id.

Either motion or petition may be invoked, *Griffith v. Maxwell* 25 W. 658; *Williams v. Boren* id. 667; *Spokane Etc. Co. v. Stanley* id. 653.

Judgment may be vacated for fraud within three years after discovery of fraud, *Peyton v. Peyton* 28 W. 278.

Void judgment against land remedy is by quieting title, *Krutz v. Isaacs* 25 W. 566.

District courts had no power over judgment after next term, *Hancock v. Stewart* 1 W. T. 323; *Hale v. Finch* 1 W. T. 513.

Defective record not going to merits is not ground to set aside judgment, *Nesqual-*

*ly Co. v. Taylor* 1 W. T. 2.

Judgment against minor by appearance of one not having right may be impeached collaterally, *Hatch v. Ferguson* 57 Fed. Rep. 966 affirmed (C. C. A.) 68 Id. 43.

Party of diverse citizenship and not a party to action in state court may vacate decree for fraud in Federal Court after

time has expired, *Hatch v. Ferguson* 52 Fed. Rep. 833.

If proceeding removed to Federal Court jurisdiction will be taken in equity under the state statute, *Cowley v. Northern Pacific R. R. Co.* 159 U. S. 569.

**§8131. Motion for New Trial Within One Year.** §437.—437. When the grounds for a new trial could not, with reasonable diligence, have been discovered before, but are discovered after the term at which the verdict, report of referee, or decision was rendered or made, the application may be made by petition filed as in other cases, not later than the second term after the discovery, on which notice shall be served and returned, and the defendant held to appear as in an original action. The facts stated in the petition shall be considered as denied without answer. The case shall be tried as other cases by ordinary proceedings, but no motion shall be filed more than one year after the final judgment was rendered.

Judgment cannot be modified two years after entry, *Seattle v. Krutz* 78 W. 553.

Adultery by wife concealed is not ground for vacating decree, *Cooper v. Cooper* 92 W. 87.

Petition for newly discovered evidence must be made within one year—equity afterward, *Denny-Renton Clay Co. v. Sartori* 87 W. 545.

A judgment after time for its disturbance has passed in the absence of fraud in its procurement or want of jurisdiction stands absolute, *Wolferman v. Bell* 8 W. 140.

Petition of assignee of city warrants to vacate judgment four years after its rendition is too late, *West Philadelphia T. & T. Co. v. Olympia* 19 W. 150.

After term has expired only relief is in equity—prohibition, *State ex rel. Boyle v. Superior Court* 19 W. 128.

Equity will relieve against clerical errors after time expired—party seeking relief must show facts and diligence under the statute, *Long v. Elsenbeis* 18 W. 423.

Minor must vacate judgment within one year after majority, *Hill v. Lowman* 15 W. 503.

**§8132. Motion Against Irregularities Within One Year.** §438. The proceedings to vacate or modify a judgment or order for mistakes or omissions of the clerk, or irregularity in obtaining the judgment or order, shall be by motion served on the adverse party, or on his attorney in the action, and within one year.

Applies to motion to set aside order of public necessity, *Spokane Val. P. Co. v. Northern Pac. R. Co.* 99 W. 557.

Action against executrix for fraud, does statute apply? *Davis v. Seavey* 95 W. 57.

Superior courts having no terms there is no probationary period for judgments and they can be modified only as provided by statute—no motion for judgment non obstante nor new trial after judgment, *Oka-zaki v. Sussman* 79 W. 622.

Applies in action to forfeit realty contract and quiet title, *Smith v. Stiles*, 68 W. 345.

Where original petition denied, amended petition was new proceeding, *Smith v. Stiles*, 68 W. 345.

Judgment contrary to stipulation of parties cannot be vacated after one year—diligence required, *Nelson v. Nelson* 56 W. 571.

Petition to vacate sale of receiver for inadequacy of price denied for laches, *Dibble v. Washington Food Co.* 57 W. 176.

Vacation of judgment on service on attorney in original case after one year invalid, *Keith v. Rose* 59 W. 197.

Defaulting defendant may have judgment vacated at confirmation of sale, *Stark Brothers v. Royce* 44 W. 287.

Void judgment may be vacated on three days' notice at any time by service on attorney and showing dehors the record, *Dane v. Daniel* 28 W. 155.

Cited 84 W. 392.

**§8133. When Petition Refused—Limitation.** §439. The proceedings to obtain the benefit of subdivisions two, three, four, five, six, and seven of section thirteen hundred and twenty-six [§8130] shall be by petition, verified by affidavit, setting forth the judgment or order, the facts or errors constituting a cause to vacate or modify it, and if the party is a defendant, the facts constituting a defense to the action; and such proceedings must be commenced within one year after the judgment or order was made, unless the party entitled thereto be a minor or person of unsound mind, and then within one year from the removal of such disability.



Petition not showing when judgment entered, nor discovery of cause insufficient—appeal and motion concluded case, *Dawson v. Carstens* 98 W. 96.

Judgment reformed to what was intended *Litzell v. Hart* 96 W. 471.

Change of judge may be had, *Cooper v. Cooper* 83 W. 85.

Petition may be verified by attorney—meritorious defense stated, *Frieze v. Powell* 79 W. 483.

Ward hopelessly insane is within the statute, *Curry v. Wilson* 45 W. 19.

Vacation for fraud must be by petition or bill in equity—judgment on two notes,

§8134.

**Proceedings on Petition.** §440. In such proceedings the party shall be brought into court in the same way, on the same notice as to time, mode of service, and mode of return, and the pleadings shall be governed by the same principles, and issues be made up by the same form, and all the proceedings conducted in the same way, as near as can be, as in original action by ordinary proceedings, except that the facts stated in the petition shall be deemed denied without answer, and defendant shall introduce no new cause, and the cause of the petition shall alone be tried. L. '91 44.

Voluntary appearance waived summons—appearance recited in bill of exceptions dispensed with recital in judgment, *Hartford v. Stout* 102 W. 241.

Filing of general denial is not objectionable, *Swanson v. Hoyle* 32 W. 169.

No affidavit of merits necessary—answer, *Wheeler v. Moore* 10 W. 309.

Vacation of judgment avoids execution sale, *Benney v. Clein*, 15 W. 581.

Court has inherent power to make judgment conform to the one actually entered, *O'Bryan v. Am. Inv. Co.*, 50 W. 371; or to set aside judgment, *Dane v. Daniel*, 28 W. 155.

§8135. **Other Laws Saved.** §4. The provisions of this chapter shall not be so construed as to affect the power of the court to vacate or modify judgments or orders as elsewhere in this code provided; nor shall any judgment of acquittal in a criminal action be vacated under the provisions of this chapter.

§8136: **Judgment—Damages.** §5. In all cases in which an application under this chapter to vacate or modify a judgment or order for the recovery of money is denied, if proceedings on the judgment or order shall have been suspended, judgment shall be rendered against the plaintiff for the amount of the former judgment or order, interest, and costs, together with damages at the discretion of the court, not exceeding ten per cent. on the amount of the judgment or order.

In claim for special damage dismissal made, *Cady v. Case, Huling & Co.* 10 W. 140.

§8137. **Merit Must Be Shown—Liens.** §441.—441. The judgment shall not be vacated on motion or petition until it is adjudged that there is a valid defense to the action in which the judgment is rendered; or, if the plaintiff seeks its vacation, that there is a valid cause of action; and when judgment is modified, all liens and securities obtained under it shall be preserved to the modified judgment.

Equity suit to vacate must show valid defense, *Chehalis Coal Co. v. Laisure* 97 W. 422.

Judgment founded on conspiracy and overreaching should be vacated, *Paltro v. Govenas* 97 W. 327.

Petition to vacate must show defense,

§8138. **Grounds to Vacate to Be Tried First.** §442.—442. The court may first try and decide upon the grounds to vacate or modify a judgment or order, before trying or deciding upon the validity of the defense or cause of action.

only one secured by mortgage—jurisdiction—want of proof of service, *Twigg v. James* 37 W. 434.

Diligence is required and granting of petition is in discretion of the court, *Bozzio v. Vaglio* 10 W. 270.

Quere: In case of dismissal of action can plaintiff vacate judgment, *Chehalis County v. Ellingson* 21 W. 638.

Not abuse of discretion to deny motion to vacate when petition shows only want of attention of counsel and client, *Myers v. Landrum*, 4 W. 762.

Must be sought by petition only, *Williams v. Breen*, 25 W. 666.

Prohibition does not lie to prevent vacation of judgment where same would be final, *State ex rel. Twigg v. Sup.-Ct.*, 34 W. 643.

Where judgment on pleadings granted, remedy is by appeal, *Ellis v. Moon*, 40 W. 114.

General appearance in support of motion to vacate judgment does not validate judgment or waive question of jurisdiction, *Bennett v. Maccabees*, 40 W. 431.

Denial of petition to vacate is final, *Wilson v. Seattle Dry Dock Co.*, 26 W. 297; *In re Lamona's Estate*, 29 W. 394. See *Pierce County v. Bunch*, 49 W. 599.

*Hoefler v. Sawtelle* 43 W. 23.

Court shall find if there is defense but not try the case, *Williams v. Breen* 25 W. 666.

Liens are preserved as to personalty—re-entry of judgment with change does not destroy lien, *Smith v. Delanty* 11 W. 386.

Findings not necessary on question of grounds of vacation of judgment, *Frieze v. Powell* 79 W. 483.

**§8139. Injunction. §443.—443.** The party seeking to vacate or modify a judgment or order, may obtain an injunction suspending proceedings on the whole or part thereof, which injunction may be granted by the court or the judge, upon its being rendered probable, by affidavit or petition sworn to, or by exhibition of the record, that the party is entitled to have such judgment or order vacated or modified.

## JURIES.

Coroner's jury and inquest §1738.

Exemptions of employers of militiamen Grand jury, procedure §9232.  
§3765-142. Trial by jury §8488.

**AN ACT in relation to juries.** Approved February 25, 1891. Laws '91 p 86.

FORMER LAWS, '54 p 431; '61-2 p 33; '62-3 p 399; '77 p 233; C81 §§2078-85, and '83 p 33, '87-8 pp 115 117.

**§8140. Jury Defined. §1.** A jury is a body of men temporarily selected from the qualified inhabitants of a particular district, and invested with power, 1. To present or indict a person for a public offense; or 2. To try a question of fact.

**§8141. Three Kinds of Juries. §2.** There shall be three kinds of juries:  
1. A grand jury; 2. A petit jury; 3. A jury of inquest.

**§8142. Grand Jury. §3.** A grand jury is a body of men not less than twelve nor more than seventeen in number impaneled and sworn to inquire of public offenses committed or triable within the county.

**§8143. Petit Jury. §4.** A petit jury is a body of men, twelve in number in the superior court, and six in number in courts of justices of the peace; drawn in the superior court by lot from the jurors in attendance upon the court at a particular session, and sworn to try and determine a question of fact; but in a justice's court the jury is drawn according to the mode specially provided for such court.

**§8144. Jury of Inquest. §5.** A jury of inquest is a body of men, six in number, summoned from the qualified inhabitants of a particular district, before the coroner, or other ministerial officer, to inquire of particular facts.

**§8145. Exemptions—Excuses. §7.** Civil officers of the United States, civil and judicial officers of the state, attorneys at law, ministers of the gospel or priests, school teachers, practicing physicians, locomotive engineers, active members of the fire department of any city or village, all persons who have served twice as a juror within two years, and all persons over sixty years of age, shall not be compelled to serve as jurors, and in preparing jury lists, the county commissioners shall omit the names of such persons; but no act of a grand or petit jury shall be invalid by reason of such person or persons aforesaid, qualified in other respects, serving thereon; nor shall any disqualification of any member of a grand or petit jury affect the indictment or verdict, unless, the juror for that specific cause was challenged or excepted to before the finding of the indictment or rendition of the verdict, and the challenge or exception overruled, and error specifically assigned upon the overruling of such challenge or exception. A person may be excused from acting as a juror when, for any reason, his interests or those of the public will be materially injured by his attendance; or when his own health, or the death or illness of a member of his family, requires his absence; but no person shall be excused on account of the causes in this section mentioned, unless it appear that after he was summoned he could not, by reasonable precaution, have provided against them.

Person convicted of felony is not an elector, §2082.

Restoration of convict to citizenship, §4391.

Telegraph operators, clerks, etc., exempt, §8146.

Exemption is privilege of person ex-

empted and is not cause of challenge, §8124.

Member of National Guard exempt from, §3765-142.

Later section, §8152.

Telegraph employees exempt, §8146.

Exemption is privilege and does not affect verdict, *State v. Lewis* 31 W. 515.



**§8146. Telegraph Employees Exempt from Militia and Jury Duty**  
**§2351—10.** All operators, clerks and persons in the employ of any telegraph company, whilst employed in the offices of said company or along the route of its telegraph line, shall be exempt from militia duty and from serving on juries, and from any fine or penalty for the neglect thereof.

**§8147. Open Venire When Panel Set Aside.** §8. If for any cause the court shall see fit to set aside the venire for grand or petit jurors, returned as above provided, an open venire may thereupon issue to the sheriff, who shall thereupon complete the panel by such open venire as speedily as possible.

**§8148. Open Venire to Fill Jury.** §9. If for any cause a sufficient number of grand or petit jurors are not returned by the sheriff in the manner first herein contemplated, or if a sufficient number of grand or petit jurors are not in attendance, the court may order the panel filled by summoning a sufficient number by an open venire issued and directed to the sheriff.

Accused has no right in number of jurors to fill incomplete panel, *State v. Croney* 31 W. 122.

**§8149. Duty of Sheriff.** §10. When a venire is delivered to the sheriff, he shall without delay proceed to summon the jurors as therein directed, and shall immediately thereafter make and file in the court a return of his doings thereon.

**§8150. Limit of Service.** §11. No person shall be summoned as a petit juror in any superior court upon an open venire more than once in one year; and it shall be sufficient cause of challenge to any juror called to be sworn in any cause that he has been summoned upon an open venire and attended said court as a juror at any session of said court held within one year prior to the time of such challenge; or that he has been summoned from the bystanders or body of the county, and has served as juror in any cause upon such summons, within one year prior to the time of such challenge.

Former service is ground of challenge, but does not render juror incompetent, *State v. Hall* 24 W. 255.

**AN ACT** relating to the selection, exemption and service of jurors in the superior courts of the State of Washington, and repealing chapter 73 of the Session Laws of 1909. Approved March 13, 1911. Laws '11 p 314.

**§8151. Qualification of Jurors.** §1. No person shall be competent to serve as a juror in the superior courts of the State of Washington unless he be (1) an elector and taxpayer of the state (2) a resident of the county in which he is called for service for more than one year preceding such time (3) over twenty-one years of age (4) in full possession of his faculties and of sound mind (5) able to read and write the English language.

Juror qualified though not taxpayer of county where called, *State v. Jahns* 61 W. 636; *Lasityr v. Olympia* 61 W. 651. *Seattle* 39 W. 516. Former section construed, 12 W. 291; 14 W. 403; 15 W. 421, 477; 16 W. 119; 19 W. 57.

Jurors required to be taxpayers valid— Absence from territory for two years federal constitution has no application to state courts, *State v. McDowell* 61 W. 398. with purpose to return does not disqualify.

Freeholder qualified as juror, *McKnight Clarke v. Territory* 1 W. T. 69.

**§8152. Persons Exempt.** §2. Officers of the United States and of the state, attorneys at law, school teachers, practising physicians, licensed embalmers, active members of the fire and police departments of any municipality, women, and all persons over sixty years of age, shall not be compelled to serve as jurors; and in preparing jury lists, the names of such persons, other than women and persons over sixty years of age, shall, if it be known that they are entitled to be excused from jury service, be omitted from the jury list; Provided, however, That the right of any such person to be excused from jury service shall not be cause for challenge as to his competency if he desires to serve. Provided further: That any woman desiring to be excused from jury service may claim exemption by signing a written or printed notice thereof and returning same to the sheriff before the date for appearance, and if exemption is claimed by reason of sex, no fee shall be allowed for her appearance. And it shall be the duty of the person serving any summons for jury service to inform the person served of this provision.

Former and broader section, §8145.

**§8153. Jury List.** §3. Upon the taking effect of this act, the judge or judges of the superior court of each county in this state shall divide the county into not less than three nor more than six jury districts.

**§8153. Jury Lists.** §3. Upon the taking effect of this act, the judge or judges of the superior court of each county in this state shall divide the county into not less than three nor more than six jury districts, following the lines of voting precincts and arranging the districts in such manner that the population in each district shall be as nearly equal as may be, and the fixing of the boundaries of the district shall be evidenced by an order made by the court and entered upon its records. The County Assessor in each county in the state shall prepare annually a list of all persons qualified and subject to serve as a juror, giving the name, age, sex, whether naturalized or native born citizen, occupation, judicial district and post-office address of such persons and file a copy thereof with the County Clerk on or before the first day of June of each year. Any female who upon being listed by the County Assessor shall claim her exemption to serve as a juror, shall not be listed by the said County Clerk in the preparation of the list of jurors. During the month of July of each

sons who may have removed from the county, or who may have served as jurors within five years theretofore (unless they shall be necessary to make up a sufficient list) and the names of the new list shall be deposited in the box for service for that year, as hereinbefore provided.

Jurors drawn preceding month and summoned for "ensuing" month not cause of challenge to panel, *State v. Leroy* 61 W. 405.

List made up from other sources sustained, *State v. Rholeder* 82 W. 618.

Jury districts valid, *State v. Newcomb* 58 W. 414.

Statute not clear procedure taken must

be shown prejudicial, *Mercereau v. Maughlin Mill Co.* 53 W. 475.

Statutes providing for drawing of juries are directory, drawing valid unless prejudice shown—failure to use challenges, *State v. Barnes* 54 W. 493.

A selection of 960 out of 5000 persons is not subject to objection by challenge to the panel, *State v. Vance* 29 W. 435.

**§8154. Jury Terms—Drawing.** §4. Jury terms shall commence on the first Monday of each month, and shall end on the Saturday preceding the first Monday of each month, unless the day of commencing or ending said term be changed by order of the judge or judges of the superior court; but it shall not be necessary to call a jury for any term in any county unless the judge or judges of the superior court of that county shall consider that there is sufficient business to be submitted to a jury to require that one be called. When the judge or judges of the superior court of any county shall deem that the public business requires a jury term to be held, he or they shall require the county clerk to draw a jury to serve for the ensuing term, and the county clerk, on the second Saturday of the calendar month preceding the month on which the jury is to be called to serve, shall be blindfolded, and in the presence of the judge or judges or of a court commissioner of the superior court, shall draw from the jury boxes such number of names as the judge or judges may have ordered to be summoned as jurors for the ensuing term. The names shall be drawn in equal numbers from each jury box, and before the drawing is made the boxes shall be shaken up so that the slips bearing the names thereon may be thoroughly mixed, and the drawing of the slips shall depend purely upon chance.

Order extending term must be made during term, *Jennings v. Puget Sound T. L. & P. Co.* 76 W. 15.

Jury in trial shall complete case regardless of term, *Beach v. Seattle* 85 W. 379.

Judge arbitrarily selecting grand jury from forty jurors drawn invalid—proper procedure, *State ex rel. Murphy v. Superior*

*Court* 82 W. 284.

Grand jury may be summoned at any time, L. '05 270 repealed, *State ex rel. Gibson v. Gilliam* 56 W. 29.

Court may order second panel instead of open venire, *State v. Cushing* 17 W. 544.

**§8155. Grand Jury.** §5. Whenever the judge or judges of the superior court of any county in the state shall desire to summon a grand jury, the names of persons to serve as grand jurors shall be drawn from the jury list, as hereinbefore provided; Provided, however, That the names of the persons who shall serve as grand jurors shall not be stricken from the jury



list, and such service shall not excuse them from service upon petit juries, as though they had not been summoned upon the grand jury.

Cited 82 W. 284.

**§8156. Talesmen—Open Venire. §6.** If for any reason the jurors drawn for service upon a petit jury for any term shall not be sufficient to dispose of the pending jury business, or where no jury is in regular attendance and the business of the court may require the attendance of a jury before a regular term, the judge or judges of the superior court may draw from the jury list such additional names as they may consider necessary, and the persons whose names are so drawn shall thereupon be summoned to serve as jurors forthwith. The judge or judges drawing such additional names, may, in his or their discretion, order and direct that, of such additional jurors, only those living nearest to the county seat or most conveniently reached and found shall be at first summoned by the sheriff, and at any time when a sufficiency of such persons has been summoned and produced in court, such judge or judges may, in his or their discretion, order and direct the sheriff not to summon the remainder of the additional jurors so drawn. By stipulation or agreement made in open court as a part of the record, the parties to any action may agree that an open venire may be issued to make up a jury in that action, and upon order of the court approving such stipulation and directing the number of jurors to be drawn, the clerk shall issue an open venire, and the sheriff shall fill the same by summoning from the bystanders, or elsewhere, a sufficient number of persons to fill the open venire.

**§8157. Jurors May Be Excused. §7.** A person summoned as a juror may be excused from acting as such on account of any of the reasons stated in section 2 hereof; when his own health requires, on account of death in his family, or of illness in his family of such character that he is required to be in attendance thereupon, or when his business interests would be seriously prejudiced by such service. No person, however, shall be excused from service as a juror on account of business reasons unless his service is such as would lead to the waste or destruction of his property; and unless it shall appear that after having been summoned as a juror he had made every reasonable effort to permit of his serving as a juror without causing waste or destruction of his property. When excused for any of the foregoing reasons, or for any reason deemed sufficient by the court, the name of the juror so excused shall remain upon the jury list from which jurors are drawn, and his name returned to the jury box from which it was drawn. Any person applying to be excused from jury service for any of the causes herein specified, may be placed upon oath or affirmation to testify truly in all respects as to the cause for such excuse, and that he will answer truly any question put to him by the judge with respect thereto.

**§8158. Jurors Kept Together, When. §8.** In no action or proceeding whatever, except felony cases shall the jury sworn to try the issue therein be kept together and in the custody of the officers of the court, save during the actual progress of the trial, until the case shall have been finally submitted to them for their decision. Whenever the jury are kept together in the custody of the officers when the trial is not in progress, they shall be supplied with meals at regular hours, and with comfortable sleeping and toilet accommodations.

**§8159. Validity of Drawing. §2.** The failure on the part of any officer to perform the duties required within the time or other irregularity in said drawing shall in no way invalidate the selecting, summoning or drawing of said jurors.

Information will not invalidate list, State v. Boklen 14 W. 403.

## LIMITATION OF ACTIONS.

**§8160. Bar of the Statute Interposed By Answer or Demurrer. §25.** Actions can only be commenced within the periods herein prescribed after the cause of action shall have accrued, except when in special cases a different limitation is prescribed by statute; but the objection that the action was not commenced within the time limited can only be taken by answer or demurrer.

Defenses not subject to limitation, *Buck v. Equitable Life Assurance Soc.* 96 W. 683.

Presenting claim for damages to county does not toll statute, *White v. King County* 103 W. 327.

Laches not chargeable within the statute, *Crodle v. Dodge* 99 W. 121.

Statute applies to actions at law and in equity except continuing trust, *Hotchkin v. McNaught-Collins Imp. Co.* 102 W. 161.

Real property of decedent not liable for debts after six years, §9865.

Rejected claim presented to county commissioners three months, §1679.

Special act of legislature prohibited, Const., art. 2 §28.

Assessments local improvements ten years, §1029.

Demurrer against limitation, §8346.

Surety of executor six years, §9966.

Realty sold by executor or guardian five years, §7542.

Paper title to realty and payment of taxes seven years, §7536.

Statutes of limitations relate to the remedy, *Raymond v. Morrison* 9 W. 156.

Statute is legitimate defense and amendment allowed to interpose it, *Thomas v. Price* 33 W. 459.

The limitation sections of the Civil Practice Act, Criminal Practice Act and Probate Practice Act, are separate provisions and do not affect each other, *Baer v. Choir* 7 W. 631.

The general statute does not apply to tax liens authorized by special city charter, *Port Townsend v. Eisenbeis* 28 W. 533.

Limitations begin to run from the Code of '81 whether the statute had begun to run or not prior to that time, *Packscher v. Fuller* 6 W. 534; *Moore v. Brownfield* 7 W. 23.

In transitory actions the law of the forum is to be applied, *Adams v. Kelly et al.* 2 W. T. 263.

A complaint showing the statute has run is demurrable, *Wilt v. Buchtel* 2 W. T. 417.

Question of limitations not raised by general demurrer, *Joergenson v. Joergenson* 28 W. 477.

Complaint demurrable was cured by reply, *Marvin v. Yates* 26 W. 50.

Right of foreclosure when interest in default will not set statute running unless mortgagee claims it, *First Natl. Bank v. Parker* 28 W. 234.

Demurrer amended to interpose statute of limitations, *McClaine v. Fairchild* 23 W. 758; or special demurrer after general demurrer, *Roche v. Spokane County* 22 W. 121.

**§8161. Ten Years a Bar. §26.—26.** The period prescribed in the preceding section for the commencement of actions shall be as follows:

Within ten years:

1. Actions for the recovery of real property, or for the recovery of the possession thereof; and no action shall be maintained for such recovery unless it appear that the plaintiff, his ancestors, predecessor or grantor was seized or possessed of the premises in question within ten years before the commencement of the action.

Reduction of limitation to 10 years valid, *Christianson v. King County* 203 Fed. 894.

Ejectment maintained after adverse holding for ten years against record title and payment of taxes, *Alexander v. Ben-*

Defense is personal and cannot be interposed in behalf of another—general demurrer will not raise defense, *Board v. First Presbyterian Church* 19 W. 455.

Limitation in insurance policy runs from the fire, *State Insurance Co. v. Meesman* 2 W. 459.

Limitation of six months in insurance policy, held binding, *Hill v. Phoenix Ins. Co.* 14 W. 164.

Limitation in insurance policy is extended by negotiations for adjustment, *David v. Oakland Home Ins. Co.* 11 W. 181.

Limitation of action in insurance policy applies to mortgagee, *American etc. Assn. v. Farmers Ins. Co.* 11 W. 619.

The statute is not an unconscionable defense, *Morgan v. Morgan*, 10 W. 99.

Statute applies to existing causes of action, *McAuliff v. Parker* 10 W. 141.

Objection not made in first instance cannot be made on new trial, *Bay View Brewing Co. v. Grubb* 31 W. 34.

Complaint containing items limited and others that are not is not demurrable, *Mounts v. Goranson* 29 W. 261.

Federal courts will follow state courts in construction of statute limitations, *Dibble v. Bellingham Bay Land Co.* 163 U. S. 63.

Complaint disclosed statute had run, *Wilt v. Buchtel* 2 W. T. 417.

Limitations will not run in favor of contract prohibited by law, *Bullene v. Garrison* 1 W. T. 588.

Adverse possession of county or city streets does not run against the public, *West Seattle v. W. S. L. & I. Co.* 38 W. 359; *Rapp v. Stratton* 41 W. 263; see, *Nor. Pac. Ry. Co. v. Ely*, 25 W. 384; *Port Townsend v. Eisenbach*, 28 W. 533.

Promise to pay claim as soon as established in court does not toll statute, *Marshall-Wells Hdw. Co. v. Title Guaranty & S. Co.* 89 W. 404.

Debtor induced creditor to assign claim to third party to sue another party who had agreed to pay claim, held statute did not run, *Krielsheimer v. Gill* 85 W. 175.

Contract to hold goods and pay when sold, statute runs from sale, *Paul v. Kohler & Chase* 82 W. 257.

"At any time" limitation runs from date of transaction, *Brooks v. Trustee Co.* 76 W. 589.

Defendant resident of state since inception of debt, law of forum governs, *Arthur & Co. v. Burke* 83 W. 690.

Section applies to trespass by underground mining, *Golden Eagle Min. Co. v. Emperor-Quill Co.* 93 W. 692.

nett 91 W. 688.

Statute does not run against action to quiet title by one in adverse possession, *Anderson v. Hall* 91 W. 376.

Defendant mistook plaintiff's lot and



made improvements, though holding not adverse parties required to do equity, *People's Savings Bank v. Bufford* 90 W. 204.

Prescriptive right to a dam 10 years, *St. Martin v. Skamania Boom Co.* 79 W. 393.

Owner of lot in dedicated plat does not by possession acquire title to adjoining tide lands, *Skansi v. Novak* 84 W. 39.

Does not apply where land is held under a mistake as to the true boundary line, *Johnson v. Ingram*, 63 W. 554.

Action held to be one to recover real property and not a trust, *Lehman v. Heuston* 73 W. 154.

Statute runs against attorney in trust arrangement, *Hotchkin v. McNaught-Collins Imp. Co.*, 67 W. 206.

Statute does not run against estate in remainder, *McDowell v. Beckham* 72 W. 224.

Adverse possession under mistaken belief makes title, *Wissinger v. Reed*, 69 W. 685.

Old employee a squatter on railroad property acquires no title, *Northern Pac. R. Co. v. Devine* 53 W. 241.

Taking out of delinquency tax certificates is not recognition of superior title, *Silverstone v. Hanley* 55 W. 458.

Children cannot bring action against grantee of father after ten years—trust by parole must be *ex malificio*, *Pilcher v. Lotzgesell* 57 W. 471.

Occupation for ten years makes title though there is mistake as to boundary, *McCormick v. Sorenson* 58 W. 107.

Adverse possession with mistake as to boundaries gives title, *Naher v. Farmer* 60 W. 600.

Husband and father may acquire title against children as heirs of wife, *Ferrell v. Lord* 43 W. 667.

Streets reserved in plat to use of grantor until needed by public possession is not adverse, *Thonney v. Rice* 43 W. 708.

Grantor marked line, grantee built fence and acquired title, *Weingarten v. Shurtleff*, 51 W. 602.

Deed with wrong description is color of title for title by adverse possession, *Schlossmacher v. Beacon Place Co.* 52 W. 588.

Possession of land under belief it is government land is not adverse to private owner—*Johnson v. Conner* overruled; *McNaught-Collins Imp. Co. v. May* 52 W. 632.

Boy 10 years old living with mother cannot institute adverse possession, *Calhoun v. Nelson* 47 W. 617.

Inclosing land grading etc. held to *lex minimum non curat* applied, *Thorneley v. Andrews* 45 W. 413.

Adverse possession of portion of railroad right of way established, *Northern Pac. R. Co. v. Spokane* 45 W. 229.

Plat by mistake of adjoining owner showed 10 foot strip which grantee abandoned work on, but paid taxes on part, held neither adverse possession nor "color" tax title, *Miller v. O'Leary* 44 W. 172.

Deed of shore lands from one having no right is not color of title—neither had right, *Bryant Lum. etc. Co. v. Pacific etc. Co.* 48 W. 574.

Use of irrigating ditch for thirty years establishes right, *Nesalhou v. Walker* 45 W. 621.

Use of irrigation ditch for 20 years establishes right of way, *McEwen v. Preece* 45 W. 612.

Entryman on public lands cannot claim adverse possession, *Delacey v. Commercial Trust Co.* 51 W. 542.

Statute does not run against minor until majority, *McMillin v. Walker* 48 W. 342.

When statute runs against mortgagee—foreclosure and failure to make adverse claimant a party, *Thornley v. Andrews*, 40 W. 580.

Title to streets cannot be acquired by adverse user against the public, *Unzelman v. Snohomish* 40 W. 588.

Land enclosed but claim only to line is not adverse, *Wilcox v. Smith* 38 W. 585.

Adverse possession of land does not include timber, *Weatherwax Lumber Co. v. Ray* 38 W. 545.

Temporary ouster by writ may be shown—no color of title—possession for six years, *George v. Columbia etc. R. Co.* 38 W. 480.

Strip of land erroneously included by fence, held and improved for necessary time made title, *Erickson v. Murlin* 39 W. 43.

Entry on lands by mistake does not work a disseisin, it must be under claim of right, *Yesler Estate v. Holmes* 39 W. 34.

Party abandoned strip of land before ten years and retook it to no effect, *Noyes v. Douglas* 39 W. 314.

Adverse possession of a public street is negatived where claimant had contested with city right to purchase—seven years not sufficient, *Port Townsend v. Lewis* 34 W. 413.

Adverse possession for ten years vests title without color or paper title, *Hesser v. Siepman* 35 W. 14.

Occupancy of unsurveyed lands is not adverse—after survey party agreed to move fence, *Suksdorf v. Humphrey* 36 W. 1.

Private right of way across another's lands acquired by user, *Wasmund v. Harm* 36 W. 176.

Proof of possession held insufficient, *Hyde v. Britton* 41 W. 277.

One who squats on land in contest by other parties acquires no title by possession for ten years, *Blake v. Shriver* 27 W. 593.

Stream diverted from its natural channel for thirty years establishes right, *Matheson v. Ward* 24 W. 407.

Reputation of ownership cannot be shown without acts of ownership, *McInerney v. Beck* 10 W. 515.

Adverse possession without occupation—pleading, *Bellingham Bay Land Co. v. Dibble* 4 W. 764.

Deed purporting to convey lot actually staked out and lot entered upon and improved makes title by adverse possession, *Flint v. Long* 12 W. 342.

Reputation of ownership may be shown—if deed in escrow possession of grantee is that of grantor, *McCauliff v. Parker* 10 W. 141.

Inclosure of land with fence by mistake as to boundary and improvement of the same constitutes adverse possession, *Bowers v. Ledgerwood* 25 W. 14 contra *Phinney v. Campbell* 16 W. 203.

Adverse possession vests title, *Kline v. Stein* 30 W. 189.

Adverse possession of railroad right of way will bar recovery by the railroad, *Northern Pacific Ry. Co. v. Ely* 25 W. 384; but not so if possession consistent with easement of the railroad, *Northern County Co. v. Enyard* 24 W. 366. Latter case limited, *Northern Pacific Co. v. Hasse* 28 W. 353.

The statute runs in causes of action accruing prior to '81 from the taking effect of the Code of 1881, *Tacoma Bldg. Etc. Assn. v. Clark* 8 W. 289; *Packscher v. Fuller* 6 W. 534; *Baer v. Choir* 7 W. 631.

Possession under a claim of right but without color of title gives the right of

§8162. Six Years a Bar. §27.—27. Within six years:

1. An action upon a judgment or decree of any court of the United States, or of any state or territory within the United States.

2. An action upon a contract in writing, or liability express or implied arising out of a written agreement.

3. An action for the rents and profits or for the use and occupation of real estate.

Covenants of seizin and warranty are broken when made if there could be no seizin by grantee and limitation begins to run, *Whatcom Timber Co. v. Wright* 102 W. 566.

Cited 102 W. 161.

Action held to be on instrument, and not to reform it and statute applies, *Keene v. Aetna Life Ins. Co.* 213 Fed. 893.

Statute runs on call for stock subscription from time subscription is due, *Handley Inv. Co. v. Trenholme* 91 W. 146.

Limitation is three years on written contract requiring oral evidence to establish price, *Ingalls v. Angell* 76 W. 692.

Character of trespass it seems determines limitation though arising from written contract, *Clark Lloyd Co. v. Puget Sound & C. R. Co.* 92 W. 601.

Guaranty of note does not terminate with note, *Ekre v. Cain*, 66 W. 659.

Statute runs from renunciation of agreement to convey, against person making part payments, *Gasaway v. Ballin* 57 W. 355.

Failure to pay installment of interest does not start running of statute, *Weinberg v. Naher* 51 W. 591.

Mortgage and note with privilege of renewal barred after six years from last renewal—limitation on general and local taxes paid, *Childs v. Smith* 51 W. 457.

Liability of railway to city under franchise to keep street in repair, city paying damages—runs from date of payment? defenses against city, *Seattle v. Northern Pac. R. Co.* 47 W. 552.

Action to foreclose mortgage barred after six years—absence of mortgagor does not raise statute—exception of mortgage in grant does not estop grantee pleading statute, *Bayer v. Price* 45 W. 667.

Action to recover taxes agreed to be paid is limited to six years from time taxes became due, *Litchfield v. Cowley* 34 W. 556.

Agreement that installment note shall become due on default of any installment does not start the statute—extension of note with mortgagee in possession need not be recorded, *White v. Krutz* 37 W. 34.

the statute, *Moore v. Brownfield* 7 W. 23.

Wife procured divorce in another State, and conveyed her interest in lands belonging to the community in this State, in an action to set aside conveyance as fraudulent, held, that knowledge of certain facts was chargeable to her and set the statute running, *Morgan v. Morgan* 10 W. 99.

Recovery for land taken by eminent domain governed by above section, *Aylmore v. Seattle* 100 W. 515.

Public grant of right of way with reversion is not subject to adverse possession, *McDonald v. Ward* 99 W. 354.

Statute having run, rights not lost by parol admissions, *McInnis v. Day Lum. Co.* 102 W. 38.

Statute does not run while mortgagee in possession collecting rents, *Catlin v. Murray* 37 W. 164.

Statute does not run against mortgagee in possession after void foreclosure for want of making children parties—procedure, *Investment Securities Co. v. Adams* 37 W. 211.

This section applies to action by co-surety for contribution *Caldwell v. Har-ley* 41 W. 296.

Affirmed *Lindblom v. Johnston* 92 W. 171.

The above section is applicable to domestic as well as foreign judgments and statute runs from rendition of judgment, *Citizens National Bank v. Lucas* 26 W. 417; *Shephard v. Gove* 26 W. 452; see 1 W. 6.

The absence of a mortgagor from the State will not suspend the statute when he has sold the property mortgaged and his grantee resides in the State and his deed is of record, *George v. Butler* 26 W. 456; *Denny v. Palmer* 26 W. 469.

Several promissory notes secured by one mortgage, the statute runs as to each note separately, *id.*

A mortgagee has a right to redeem from street assessment sale within six years after the maturity of his mortgage, *Krutz v. Gardner* 25 W. 396.

Mortgagor after foreclosure cannot pay and extend the limitation upon the mortgagee's right of foreclosure, *Raymond v. Bales* 26 W. 493.

When grace allowed on notes the statute begins to run after its expiration, *Joergenson v. Joergenson* 28 W. 477.

Statute runs on guaranty of certificates of delinquency from discovery of irregularity defeating certificate, *Gove v. Tacoma* 26 W. 474.

Statute runs on foreclosure of mortgage same as though no judgment has been had on note secured thereby, *Hanna v. Kasson* 26 W. 568.

Statute runs on breach of warranty in sale of realty from eviction, *West Coast M. & I. Co. v. West Coast Imp. Co.* 25 W. 628.

When statute begins to run on condi-



tional subscription in aid of railway, *McClaine v. Fairchild* 23 W. 758.

Statute runs on city warrants from time there is money and holder has notice, *Potter v. New Whatcom* 20 W. 589.

Statute runs on deficiency judgment from time it is entered through foreclosure entered before, *Bignold v. Carr* 24 W. 413.

In foreclosure of mortgage person not party to action may plead statute though cause merged in judgment as to others, *Damon v. Leque* 17 W. 573.

Supplementary—AN ACT relating to the duration of judgments and repealing Sections 462 (C81 §323) and 463 ('91 p 165 §1), Volume 2, Hill's Code of Washington. Approved March 6, 1897. Laws '97 p 52.

**§8163. Limitation Judgments. §1.** After the expiration of six years from the rendition of any judgment, it shall cease to be a lien or charge against the estate or person of the judgment debtor.

Injunction suspends limitation, *Hensen v. Peter* 95 W. 628.

Supersedes provision relating to revival of judgment, *Catton v. Reehling* 78 W. 187.

Action to set aside fraudulent conveyances and subject property to judgment after six years, dismissed, *Johnson v. Great Northern Lum. Co.* 85 W. 16.

Execution any time in six years—if contract prior to act judgment must be revived after five years, *Kelleher v. Wells* 87 W. 323.

Judgments on contracts prior to act may be revived, *Foley v. Kelleher* 92 W. 314.

Time of proceeding may be reduced but must not summarily cut off remedy, *Gaffney v. Jones* 44 W. 158.

Act valid as to subsequent contracts and repealed, §8111 and §8121 relating

Action accrues on contract to convey land upon its breach, *Maitland v. Zanga* 14 W. 92.

Action on bond for conveyance of realty, held barred, *Wilt v. Butchel* 1 W. T. 417, 420.

Action for rent limited to six years, *Peterson v. Pantheon Lumber Co.*, 62 W. 189.

Convenants of warranty, quiet enjoyment, etc, *West Coast Mfg., Co. v. West Coast Imp. Co.* 25 W. 627.

to lien of judgments, *Seattle B. & M. Co. v. Donofrio* 59 W. 98.

Does not apply to prior contracts, *Howard v. Ross* 38 W. 627.

Invalid as to contracts prior to act taking effect—though judgment rendered after act in force, *Fischer v. Kittenger* 39 W. 174.

Act void as to judgments and contracts existing at time it went into effect, *Williams v. Packard* 39 W. 217.

This act applies to prior judgments for tort, *Gaffney v. Jones* 39 W. 587.

This act is unconstitutional as to existing judgments being an impairment of the obligation of contracts, *Bettman v. Cowley* 19 W. 207; *Palmer v. Labaree* 23 W. 409; *Raught v. Lewis* 24 W. 47.

**§8164. Judgments—No Proceedings Whatsoever. §2.** No suit, action, or other proceedings shall ever be had, on any judgment rendered in the State of Washington by which the lien or duration of such judgment, claim or demand shall be extended or continued in force for any greater or longer period than six years from the date of the entry of the original judgment.

Action one day before six years expires subject to demurrer, *Burman v. Douglas* 78 W. 394.

Does not prohibit actions on domestic judgments, *Lilly-Brackett Co. v. Sonne-*

man 50 W. 487.

No proceeding can operate to continue judgment beyond statutory limit, *Meikle v. Cloquet* 44 W. 513.

**§8165. All Existing Judgments to Run at Least One Year. §3.** When the lien of any judgment, as specified in §1 of this act, has run six years, or its duration will be less than one year by reason of this act, then the lien of such judgment shall continue for one year from and after the taking effect of this act.

**§8166. Three Years a Bar. §28.—28.** Within three years:

1. An action for waste or trespass upon real property.
2. An action for taking, detaining or injuring personal property, including an action for the specific recovery thereof, or for any other injury to the person or rights of another not hereinafter enumerated.
3. An action upon a contract or liability, express or implied, which is not in writing and does not arise out of any written instrument.
4. An action for relief upon the ground of fraud, the cause of action in such case not to be deemed to have accrued until the discovery by the aggrieved party of the facts constituting the fraud.
5. An action against a sheriff, coroner or constable upon a liability incurred by the doing of an act in his official capacity and by virtue of his office, or by the omission of an official duty, including the non-payment of money collected upon an execution; but this subdivision shall not apply to action for an escape.
6. An action upon a statute for penalty or forfeiture, where an action is given to the party aggrieved, or to such party and the state, except when the statute imposing it prescribed a different penalty.

7. An action for seduction and breach of promise of marriage.

Applies to actions at law and in equity except continuing trusts, Hotchkin v. McNaught-Collins Imp. Co. 102 W. 161.

Subd. 2 does not apply to public official failing to require bond of grain warehouseman, Northern Grain, etc. Co. v. Holst 95 W. 312.

Action for failure to deliver will, Myers v. Exchange Nat. Bank 96 W. 244.

Statute begins to run at end of term of office for shortages of official, Hillyard ex Tanner v. Carabin 96 W. 366.

Agent acquiring land for principal, statute runs from discovery, Ackerson v. Elliott 97 W. 31.

Second wife found letter indicating former marriage of husband, held not knowledge of fraud, Larson v. McMillan 99 W. 626.

Second wife found letter indicating former marriage of husband, held not knowledge of fraud, Larson v. McMillan 99 W. 626.

Plaintiff held not to have had knowledge of fraud on conflicting evidence, Langley v. Devlin 95 W. 171.

Agreement of deceased to furnish home to plaintiff, three year limitation applies, Zuba v. Horst 100 W. 359.

Recovery for property taken by city in eminent domain not within subd. 1, Aylmore v. Seattle 100 W. 515.

Action for consequential damages by incinerator of city established by eminent domain is within subd. 3, Jacobs v. Seattle 100 W. 524.

Action against city for diverting water is on implied contract or liability, Domrese v. Roslyn 101 W. 372.

Right of action for seduction accrues at time promise is made or illicit relations are broken off, Rockwell v. Day 101 W. 580.

Earlier items of account held barred, Hills v. Hoquiam 94 W. 63.

Injured servant signing release and becoming worse before statute had run cannot cancel release after statute had run, Johnson v. Chicago M. & St. P. Ry. Co. 224 Fed. 196.

Damage by tunneling of railroad, Seattle v. Great Nor. Ry. Co. 239 Fed. 1009.

Damages under Sherman anti-trust act under par. 6, Harvey v. Booth Fisheries Co. 228 Fed. 782.

Applies to fraud as to water in well, Grubb v. House 93 W. 200.

Holder of special fund warrant must know of conversion of fund to start statute, University State Bank v. Bremerton 86 W. 261.

Action on bond to secure lienors in work done for public, Kepl v. Fidelity & Deposit Co. 81 W. 135.

Fraud predicated on representation that mortgage was first mortgage cannot be sustained when plaintiff had abstract showing otherwise, Uhlbright v. Mulcahy 78 W. 9.

Section applies to implied contract of boom company to drive logs, Murray v. Wishkah Boom Co. 76 W. 605.

Above section applies to written contract requiring oral evidence in part to establish it, Ingalls v. Angell 76 W. 692.

Breach of duty under contract and not fraud is cause of action against attorney for wrongfully dismissing action and con-

cealing the fact, Cornell v. Edsen 78 W. 662.

Whether fraud could have been discovered is for jury, McDonald v. McDougall 86 W. 339.

Superseded as to action to cancel tax deed by §8167—agreement to bid at sale, Savage v. Ash 86 W. 43.

Applies to action against trustee of corporation for reducing capital, Thomas v. Richter 88 W. 451.

Counterclaim barred before action begun, Rubin v. Lucerne & Aurelia Crown R. Co., 87 W. 198.

Character of trespass seems to determine limitation, Clark Lloyd Lum. Co. v. Puget Sound & C. R. Co. 92 W. 601.

Complaint for fraud as to character of land, held demurrable, plaintiff having lived on land five years, Hoy v. Beck 92 W. 536.

Applies where the gravamen of an action respecting written contracts is fraud, Conway v. Co-operative Homebuilders, 65 W. 39.

Subd. 4 applies in an action by a trustee of a bankrupt corporation on a purchase of its own stock in fraud of creditors, Union Trust Co. v. Amery, 67 W. 1.

Action accrues when lands flooded not when dam built, Brisky v. Leavenworth etc. Co., 68 W. 386.

Alienation of affections, Mullins v. Mullins, 66 W. 351.

Applies to fraud by public officer—when statute begins to run, Skagit County v. Am. Bonding Co. 59 W. 1.

Fraud in substituted service of summons in foreclosure, statute runs from discovery of fraud—imputed notice, Johnstone v. Peyton 59 W. 436.

Action for refund of excessive assessment three years—charter limitations—no trust to suspend, State ex rel. McCullough v. Seattle 53 W. 655.

Statute applies to street assessment judgment, Hinckley v. Seattle 37 W. 269.

Statute runs from discovery of fraud in conveyance before bankruptcy proceedings—creditor may sue though there was assignee, Fidelity National Bank v. Adams 38 W. 75.

"Or liability" refers to contractual liability—overflow from irrigating canal is not trespass and two-year limitation applies, Suter v. Wenatchee W. P. Co. 35 W. 1.

Action accrues for diversion of local improvements funds by city when warrant holder has notice of diversion, Northwestern Lumber Co. v. Aberdeen 35 W. 636.

Limitation held to have run on charged fraudulent street railway reorganization, Griffith v. Seattle etc. Co. 36 W. 627.

Mere ignorance of plaintiff is not fraud—stock subscription liability accrues to creditor upon insolvency—receiver had—no call was made, Chilberg v. Siebenbaum 41 W. 663.

Statute does not run in favor of fraudulent judgment, fraud interposed when judgment sought to be enforced, State ex rel. American etc. Co. v. Tanner 45 W. 348.

Repudiation of trust is discovery of fraud, Garvey v. Garvey 52 W. 516.



Own error in draft statute runs from error however fraudulent payor's motives, *Evert v. Tower* 51 W. 514.

Action on statutory bond to secure lienors limited to three years, *Johnson Service Co. v. Aetna Ind. Co.* 46 W. 434.

Action accrues on discovery of diversion by city of local improvement fund—notice—laches, *Northwestern Lum. Co. v. Aberdeen* 44 W. 261.

Deed of record disclosing fraud in discharge of trust will set statute running, *Irwin v. Holbrook* 32 W. 349.

Action for death by wrongful act is limited to three years, *Robinson v. Baltimore Etc. Co.* 26 W. 484.

An action to quiet title against a fraudulent conveyance of land is not limited to three years, *Wagner v. Law* 3 W. 500.

Action on official bond for a breach of official duty is limited to three years, and the requirement of leave of court does not enlarge the time, *Spokane County v. Prescott* 19 W. 418.

Action by ward against guardian for fraud is barred after three years from the time of majority and knowledge of the ward—stale demand, *Wickham v. Sprague* 18 W. 466.

Action for damages for change of street grade is limited to three years, *Sargent v. City of Tacoma* 10 W. 212.

Action by divorced wife to set aside conveyance fraudulently obtained from her is limited to three years, *Morgan v. Morgan*

**AN ACT to provide a limitation for the bringing of actions to set aside or cancel tax deeds, or for the recovery of lands sold for delinquent taxes.**

Approved March 15, 1907. Laws '07 398.

**§8167. Actions Must Be Brought Within Three Years. §1.** Actions to set aside or cancel the deed of any county treasurer issued after and upon the sale of lands for general, state, county or municipal taxes, or for the recovery of lands sold for delinquent taxes, must be brought within three years from and after the date of the issuance of such treasurer's deed: Provided, This act shall not apply to actions not otherwise barred on deeds heretofore issued if the same be commenced within one year after the passage of this act.

Tax deed cannot be attacked after 12 years for premature foreclosure of tax lien, *Tamblin v. Crowley* 98 W. 133.

Applies to action by city to recover overpayments on improvement bonds—when action accrues, *Seattle v. Walker* 87 W. 609.

Limits action to quiet title for want of valid summons, *Keller v. Davis* 93 W. 336.

Defendant in possession may defend against deed after three years, *Buty v. Goldfinch* 74 W. 532.

Supersedes §8166 as to cancellation for fraud—agreement to bid at sale, *Savage v. Ash* 86 W. 43.

Cited in sustaining plea of the statute, *Dabney v. Stearns*, 73 W.

Does not repeal §6997, *Seattle Land & Imp. Co. v. Blum* 71 W. 530.

An action to cancel a tax deed barred, although the tax judgment on which it was based was void for want of jurisdiction, *Fish v. Fear*, 64 W. 414; *Baylis v. Kerrick*, 64 W. 410.

Affirmed, *Wilson v. Korte* 91 W. 30.

Applies where a tax deed is issued under a judgment of tax foreclosure voidable for fraud, *Fleming v. Stearns*, 66 W.

10 W. 99.

Action against a city for misappropriation of special funds must be brought within three years, but recovery may be had within six years out of the special fund, *Quaker City Natl. Bank v. Tacoma* 27 W. 259.

When complaint contains direct statement that fraud was discovered within three years, complaint is not demurrable, *Irwin v. Holbrook* 26 W. 89.

Action on a guardian's bond conditioned to account for the proceeds of sale of his ward's estate is limited to three years, *Dickman v. Strobach* 26 W. 558.

Knowledge of fraud by plaintiff's attorney will start the statute running as to the plaintiff, *Deering v. Holcomb* 26 W. 588.

Action in equity to vacate a judgment based on fraud must be brought within three years, *Peyton v. Peyton* 28 W. 278.

Not necessary to plead diligence in discovering fraud, *Stearns v. Hockbrune* 24 W. 206.

Limitation runs in favor of county on claim for money wrongfully collected by sheriff on mortgage foreclosure sales from time money paid over, *Spinney v. Pierce County* 20 W. 126.

Assessment on stockholder of national bank is contractual liability and is limited by the above section, *Aldrich v. McClaine (C. C. A.)* 106 Fed. Rep. 791; contra *Aldrich v. Skinner* 98 Fed. Rep. 375.

655.

Action to cancel a tax deed issued before the passage of act brought within three years after the date of the deed but not within one year after the passage of act cannot be maintained, *Hoko River Boom Co. v. Fairservice*, 69 W. 357.

Laches to start statute must be predicated on facts, *Blinn v. Grindle* 58 W. 679.

Applies to action to quiet title attacking tax foreclosure, *Anderson v. Spokane, Portland etc. R. Co.* 57 W. 439.

"After passage" means final sanction to constitute the act a law, not time of taking effect, *Cordiner v. Dear* 55 W. 479.

Nonresident may attack void judgment—failure to pay taxes for six years, *Hembree v. McFarland* 55 W. 605.

Does not apply to conspiracy with mortgagee to prevent redemption—trust, *Maher v. Potter* 60 W. 443.

Action for revocation of physicians' license after conviction of moral turpitude not within this section, *State Medical Board v. Stewart* 46 W. 79.

Action by city to foreclose lien of special assessment limited to two years, *Spokane v. Stevens* 12 W. 667; extended by

§1029 to ten years.

An action by an administrator against a former administrator for money or property of the estate is not subject to the above limitation, *Bartels v. Gove* 4 W. 632.

Damage by change of street limited to

two years, *Denney v. Everett* 46 W. 342.

Action by administrator against former administrator not within this limitation, *Bartels v. Gove* 4 W. 632.

Cited 79 W. 336.

§8168. Two Years a Bar. §29.—29. Within two years:

1. An action for libel, slander, assault, assault and battery, and false imprisonment.

2. An action upon a statute for a forfeiture or penalty to the state.

Action for damage by regrade of street two years, *State ex rel. Whitten v. Spokane* 92 W. 667.

§8169. One Year a Bar. §30.—30. Within one year:

1. An action against a sheriff or other officer for the escape of a prisoner arrested or imprisoned on civil process.

2. An action by an heir, legatee, creditor or other party interested against an executor or administrator for alleged misfeasance, malfeasance or mismanagement of the estate, within one year from the time of the final settlement or, the time such alleged misconduct was discovered.

§8170 Qui Tam Actions, Limitations On. §31.—31. An action upon a statute for a penalty given in whole or in part to the person who may prosecute for the same, shall be commenced within three years after the commission of the offense, and if the action be not commenced within one year, by private party, it may be commenced within two years after the commission of the offense in behalf of the state by the prosecuting attorney of the county where said offense was committed.

§8171. Three Months a Bar. §32.—32. Within three months:

1. An appeal from any order of a board of county commissioners, or upon a claim rejected by said board.

2. Upon claims against an estate, rejected by an executor or administrator within three months after the rejection.

Another provision as to claims against estates, §9833.

Later section as to appeal and presentment to county commissioners, §1679.

§8172. All Actions Not Specified, Two Years. §33.—33. An action for relief not hereinbefore provided for, shall be commenced within two years after the cause of action shall have accrued.

Applies to action against county for injuries by change of grade of highway—presenting claim does not toll statute, *White v. King County* 103 W. 327.

Recovery of property taken by city in eminent domain not within section, *Aylmore v. Seattle* 100 W. 515.

Applies to action by an old county to collect share of debt assumed by new county, *Douglas County v. Grant County* 98 W. 355.

Applies to failure of public official to require bond of grain warehouseman, *Northern Grain, etc. Co. v. Holst* 95 W. 312.

It seems that limitation of action on implied liability on written contract is six years, *Ihrke v. Continental Life Ins. & Inv. Co.* 91 W. 342.

Character of trespass seems to determine limitation, *Clark Lloyd Lum. Co. v. Puget Sound & C. R. Co.* 92 W. 601.

Action for tunnelling is not for trespass and is controlled by two year statute, *Welch v. Seattle & M. R. Co.* 56 W. 97.

This section applies to action by mas-

ter against servant for damage to third party, *Gaffner v. Johnson* 39 W. 437.

This section applies to consequential damage from overflow of irrigating canal, *Suter v. Wenatchee W. P. Co.* 35 W. 1.

Action for damages for removal of lateral support accrues when damage occurs, *Smith v. Seattle* 18 W. 484.

If there is action for redemption of property it is limited to two years, *Parker v. Dacres* 2 W. T. 439; *id.* 130 U. S. 43.

Action for death by wrongful act is limited to two years after death, *Nestelle v. Northern Pacific R. R. Co.* 56 Fed. Rep. 261.

Action for damages by fumes from smelter accrues from beginning of damage and not from construction of smelter, *Sterrett v. Northport M. & S. Co.* 30 W. 164.

Statute does not run against reformation of deed until the assertion of an adverse claim against party entitled to reformation, *State v. Lorenz* 22 W. 289.

§8173. Open Accounts, When Barred. §34.—34. In an action brought to recover a balance due upon a mutual, open and current account where there have been reciprocal demands between the parties, the cause of action shall be deemed to have accrued from the time of the last item proved in the account on either side, but whenever a period of more than one year shall have elapsed between any of a series of items or demands, they are not to be deemed such an account.

Where a corporate officer kept books, crediting himself with salary and charg-

ing himself with cash received, the account was a "mutual open account," *Blom v. Blom Codfish Co.* 71 W. 41.



Limitation runs on continuous contract as in action by sister against brother for services, when service ends, *Morrisey v. Fawcett* 28 W. 52; *Ah How v Furth* 13 W. 550. Entry by creditor on his own books of alleged payment not admissible to remove bar, *Schlotsfeldt v. Bull* 18 W. 64.

Guaranty of several items statute runs

§8174. **Municipalities.** §35. The limitations prescribed in this act (chapter) shall apply to actions brought in the name or for the benefit of any county or other municipality or quasi municipality of the state, in the same manner as to actions brought by private parties: Provided, That there shall be no limitation to actions brought in the name or for the benefit of the state, and no claim of right predicated upon the lapse of time shall ever be asserted against the state: And further provided, That no previously existing statute of limitation shall be interposed as a defense to any action brought in the name of or for the benefit of the state, although such statute may have run and become fully operative as a defense prior to the adoption of this act, nor shall any cause of action against the state be predicated upon such a statute. An action shall be deemed commenced when the complaint is filed. L. '03 26.

Complaint must be filed to toll statute 52. Limitations, *Murker v. Nor. Pac. R. Co.* 95 W. 280.

State, claim against, limitations apply §6264.

Adverse possession against county holding by tax sale not allowed, *Gustaveson v. Dwyer* 78 W. 336.

Does not run against tax title held by county, *Gustaveson v. Dwyer* 83 W. 303.

Action barred where the complaint was served but not filed in time, *Petree v. Washington Water Co.*, 64 W. 636.

An action by a private party deemed commenced from the time of filing the complaint, *Blinn v. Grindle*, 71 W.

Another section, §6264.

Section not repealed as to last sentence by later amendment—complaint on promissory note not filed within six years is barred, *Blalock v. Condon* 51 W. 604.

Title insufficient to include all of subject matter of former section and is in part in force, *Blalock v. Condon* 51 W. 604.

Limitation does not run on school lands against the state, *O'Brien v. Wilson* 51 W.

Act does not apply to state, *Brace & Hergert Mill Co. v. State* 49 W. 326.

Does not run against state in tide and shore lands—no estoppel, *Brace & Hergert Mill Co. v. State* 49 W. 326.

Did not repeal local assessment limitation, *Matthews v. Wagner* 49 W. 54.

Legislature may waive statute for municipal corporations, *State ex rel. McCullough v. Seattle* 60 W. 241.

State may require municipalities to forego statute, *State v. Seattle* 57 W. 602.

Mechanics lien foreclosure must be filed within eight months, *Service v. McMahon* 42 W. 452.

This section valid—state may revive its claims against municipal corporations, *State v. Aberdeen* 34 W. 61.

Title by the statute although grant by Congress, *Northern Pacific Ry. Co. v. Hasse* 28 W. 353.

Complaint must be filed to make action good against statute, *Cresswell v. Spokane County* 30 W. 620.

§8175. **Absence from the State or Concealment Raises Statute.** §36.—36. If the cause of action shall accrue against any person who shall be out of the state or concealed therein, such action may be commenced within the terms herein respectively limited after the return of such person into the state, or after the time of such concealment; and if after such cause of action shall have accrued, such person shall depart from and reside out of this state or conceal himself, the time of his absence or concealment shall not be deemed or taken as any part of the time limited for the commencement of such action.

Tolling statute of another state by payment of interest or absence—judicial notice of laws of other states, *Miller v. Miller* 90 W. 333.

Statute runs if defendant lives in this state by his true name, *Northern Com'l Co. v. Big Four Trading Co.* 86 W. 589.

The rule that a foreign corporation cannot avail itself of the statute of limitations does not apply in a foreign indemnity company's bond, providing that any suit thereon must be commenced within six months, *Ilse v. Aetna Ind. Co.*, 69 W. 484.

Absence from state returning only temporarily and not to former home raises statute, *Dignam v. Schaff* 51 W. 412.

Maintenance of home in this state where service could be made does not raise statute—installments merged in judgment,

*Crowder v. Morphy* 61 W. 626.

Older unsecured claim cannot obtain by attachment priority over mortgage when mortgagor absent, *Perkins v. Bailey* 38 W. 46.

Applies to judgment in favor of non-resident entered in his state against non-resident, *Omaha National Bank v. Lindsay* 41 W. 531.

Absent defendant owning property in the state will not start the statute running, *Denny v. Sayward* 10 W. 422.

If defendant out of state when judgment rendered statute does not begin to run, *Lake v. Steinbach* 5 W. 659.

Absence of mortgagor from the state will not suspend the statute if he has sold his interest and his grantee is in the state, *George v. Butler* 26 W. 456.

Plaintiff pleaded defendant's absence

from the state, defendant set up defense 413.

of residence, sustaining demurrer to defense was error. *Meek v. White* 26 W. 491.

Absence of defendant from the state suspends statute, *Bignold v. Carr* 24 W. Nat. Bank v. Lucas 26 W. 417.

**§8176. Disability Raises Statute When. §37.—37.** If a person entitled to bring an action mentioned in this chapter, except for a penalty or forfeiture, or against a sheriff or other officer, for an escape, be at the time the cause of action accrued either under the age of twenty-one years, or insane, or imprisoned on a criminal charge, or in execution under the sentence of a court for a term less than his natural life, the time of such disability shall not be a part of the time limited for the commencement of action.

Insanity tolling statute, *Roberts v. Pacific T. & T. Co.* 93 W. 274.

Facts held not to show insanity to toll statute in will contest, *In re Siebs Estate*, 70 W. 374.

Statute does not run against minor though lis pendens not filed and purchas-

er had no notice, *May v. Sutherland* 41 W. 609.

Action for fraud of guardian accrues from knowledge by ward after attaining majority sufficient to put on inquiry, *Wickham v. Sprauge* 18 W. 466.

**§8177. Death Raises Statute When. §38.—38.** If a person entitled to bring an action die before the expiration of the time limited for the commencement thereof, and the cause of action survive, an action may be commenced by his representatives after the expiration of the time and within one year from his death. If a person against whom an action may be brought die before the expiration of the time limited for the commencement thereof and the cause of action survives, an action may be commenced against his representatives after the expiration of that time and within one year after the issuing of letters testamentary, or of administration.

This section is superseded by §9865—foreclosure brought within one year after letters, but more than twenty years after mortgagor's death is void, *Gleason v. Hawkins* 32 W. 464.

Claim may be allowed out of personalty, *id.*; *Bank of Montreal v. Buchanan* 32 W. 480.

Statute is not arrested by death, *McAulliff v. Parker* 10 W. 141.

One declared dead from seven years' absence may bring ejectment against purchaser under probate sale, *Scott v. McNeal* 154 U. S. 34; reversing *id.*, 5 W. 309; see, *State ex rel. Young v. Sup. Ct.* 43 W. 34.

**§8178. War Raises Statute When. §39.—39.** When a person shall be an alien subject or a citizen of a country at war with the United States, the time of the continuance of the war shall not be a part of the period limited for the commencement of the action.

**§8179. Injunction Raises Statute When. §40.—40.** When the commencement of an action is stayed by injunction or a statutory prohibition, the time of the continuance of the injunction or prohibition shall not be a part of the time limited for the commencement of the action.

Injunction to prevent unauthorized payment will not toll statute in favor of action authorized, *Douglas County v. Grant County* 98 W. 355.

Bankruptcy proceedings do not toll statute, *McDermott v. Tolt Land Co.* 101 W. 114.

Injunction sought but not obtained does not toll statute, *Marshall-Wells Hdw. Co. v. Title Guaranty & S. Co.* 89 W. 404.

Foreclosure of mortgage does not raise statute in action on note, *Hinchman v. Anderson* 32 W. 198.

**§8180. Appeal Raises Statute When. §41.—41.** If an action shall be commenced within the time prescribed therefor, and a judgment therein for the plaintiff be reversed on error or appeal, the plaintiff, or if he die and the cause of action survives, his heirs or representatives may commence a new action within one year after the reversal.

Dismissal of action does not toll statute, *Marshall-Wells Hdw. Co. v. Title G. & S. Co.* 89 W. 404.

Does not apply if no cause of action was stated, *Ryno v. Snider* 58 W. 457.

**§8181. Disability Must Exist When Statute Begins to Run. §42.—42.** No person shall avail himself of a disability unless it existed when his right of action accrued.

**§8182. All Disabilities Must Be Removed. §43.—43.** When two or more disabilities shall co-exist at the time the right of action accrues, the limitation shall not attach until they all be removed.

**§8183. Waiver of Statute by Writing or Payments. §44.—44.** No acknowledgment or promise shall be sufficient evidence of a new or continuing



contract whereby to take the case out of the operation of this chapter, unless the same is contained in some writing signed by the party to be charged thereby; but this section shall not alter the effect of any payment of principal or interest.

Grantee accepting deed subject to mortgage does not toll statute, *Byrnes v. Payne* 103 W. 260.

New promise must be in writing, consideration not sufficient, *Zuhn v. Horst* 100 W. 359.

Credit of independent debt not barred raises statute, *Eureka, etc. Co. v. Knock* 95 W. 339.

Credits not payments—account and notes—intent to revive, *Arthur & Co. v. Burke* 83 W. 690.

Promise to pay when "able to spare the money or a reasonable time" sufficient, *Thisler v. Stephenson* 54 W. 605.

Time of notice does not apply to proceedings after judgment—notice same day of extension of time for filing statement of facts, *Galler v. McMahon* 51 W. 473.

Letters to raise statute must be clear and unequivocal, *Bank of Montreal v. Guse* 51 W. 365.

Presentation of note within one year is good—mortgage securing note is barred, *Frew v. Clark* 34 W. 561.

Payment by one joint maker does not bind others, *Old Dominion etc. Co. v. Daggett* 38 W. 675.

Payment to collector is payment to owner of note, *Warnock v. Itawis* 38 W. 144.

Mortgagor cannot waive statute as against other liens, *De Voe v. Rundle* 33 W. 604.

Payments alleged will be presumed made by party liable rather than stranger, *Gehres v. Orłowski* 36 W. 156.

A letter held insufficient to raise the bar

**§8184. Limitation Runs From Last Payment.** §45.—45. When any payment of principal or interest has been or shall be made upon any existing contract, whether it be a bill of exchange, promissory note, bond or other evidence of indebtedness, if such payment be made after the same shall have become due, the limitation shall commence from the time the last payment was made.

Credit in note eight years after last payment held insufficient, *Kirkpatrick v. Collins* 95 W. 399.

The statute begins to run on the day following the last payment, *Perkins v. Jennings* 27 W. 145.

Partial payments by husband on joint note of husband and wife secured by mortgage on community realty will not extend statute as to wife, *Stubblefield v. McAuliff*

**§8185. Actions Barred in Other States Are Barred in This State.** §46.—46.

When the cause of action has arisen in another state, territory or country between non-residents of this state, and by the laws of the state, territory or country where the action arose, an action cannot be maintained thereon by reason of the lapse of the time, no action shall be maintained thereon in this state.

Will court apply foreign law, *Larson v. McMillan* 99 W. 626.

A right of action arising in another state between nonresidents of this state is not barred when it is not barred by the statutes of the state where it arose, *McElroy v. Gates*, 64 W. 249.

Does not apply if judgment had in this state, *Omaha National Bank v. Lindsay* 41 W. 531.

An action barred by the laws of another State is barred in this State, *McCain v.*

of the statute, *Liberman v. Gurensky* 27 W. 410.

Partial payment will not waive statute as to surety, *Bassett v. Thrall* 21 W. 231.

Proof of payment is on party alleging it and must be clear, *Gibson v. Kerry* 19 W. 159.

Indorsement on note or entry in books are inadmissible without other proof to raise bar of statute, *Schlotfeldt v. Bull* 18 W. 64.

Where account is run under agreement payment extends statute as to items, *Bellingham Bay Imp. Co. v. Fairhaven Ry.*, 17 W. 371.

Mortgagor cannot raise statute as against his grantee by payment, *Damon v. Leque* 17 W. 573.

One spouse cannot waive the statute of limitations after the death of the other, *Bank of Montreal v. Buchanan* 32 W. 480.

Directing another to sign one's name satisfies statute, *Liberman v. Gurensky* 27 W. 410.

Payment by mortgagor or co-obligor will not bind grantee or co-obligee nor will partial involuntary payment by grantee as in redemption revive the action as to all of the obligation, *Hanna v. Kasson* 26 W. 568.

Part payment on a promissory note by one of two co-obligors does not raise the statute as to the party not paying, *Perkins v. Jennings* 27 W. 145; as to the party paying the statute begins to run the day following, *id.*

Payment of interest raises statute, *Kosłowski v. Yesler* 2 W. T. 407.

The statute does not begin to run on a contingent contract of service until the services are ended—payment on an indebtedness after the same becomes due fixes a new date for the running of the statute, *Ah How v. Furth* 13 W. 550.

A payment and acceptance of interest on note raises bar, *Kosłowski v. Yesler* 2 W. T. 407.

*Gibbon* 7 W. 314.

Statute does not apply where both contracting parties are non-residents, and the plaintiff had taken up his residence in this State prior to the maturity of the contract, *Freundt v. Hahn* 24 W. 8.

If statute has not run before defendant becomes resident of this state statute must run full time in this state, *Heber v. Young* 7 W. 84.

Action must have been completely barred in other state, *Adams v. Kelly* 2 W. T. 263.

## MANDAMUS.

## Title of Act and General Section at §§7415, 8390

Grade separation compelled by §5654.

Supreme court rules §7338s.

§8186. **Mandamus Defined. §15.** The writ of mandamus may be de-nominated a writ of mandate.

Mandamus is not prerogative writ but civil remedy available to anyone having the right—city compelled to enforce ordinance for double platoon fire system, *State ex rel Taro v. City of Everett* 101 W. 561.

Regulates official duties, will not issue to compel superintendent of reformatory to destroy photographs, *Hodgeman v. Olsen* 86 W. 615.

Constitutionality of a law may be raised in mandamus, *Hindman v. Boyd* 42 W. 17.

Proceedings in effect that of mandamus cannot be retracted by either party, *American Paper Co. v. Sullivan* 34 W. 391.

Mandamus to compel levy of tax by county commissioners to pay school bonds—facts necessary and time of action, *State ex rel. Evers v. Byrne* 32 W. 264.

Mandamus will not lie to anticipate de-

§8187. **What Courts May Grant Writ—Purposes of Writ. §16.** It may be issued by any court, except a justice's or police court, to any inferior tribunal, corporation, board or person, to compel the performance of an act which the law especially enjoins as a duty resulting from an office, trust, or station; or to compel the admission of a party to the use and enjoyment of a right or office to which he is entitled, and from which he is unlawfully precluded by such inferior tribunal, corporation, board or person.

Will not lie to compel hearing after denial of habeas corpus, *State ex Woods v. Mackintosh* 99 W. 553.

Mandamus will lie to compel dismissal of case, *State ex Stone v. Court* 97 W. 172.

Writ will lie to compel transcript from police court, *State ex Hackett v. Arnest* 100 W. 286.

Writ will lie to compel court to proceed under disclaimed jurisdiction not a judicial act reviewable by appeal, *State ex Martin v. Court* 101 W. 81.

Will not lie to perform office of appeal—will not lie after time for appeal, *State ex rel Langley v. Superior Court* 74 W. 556.

Will lie to reinstate civil service employee of city—recovery for salary—filing claim, *State ex rel. Roe v. Seattle* 88 W. 589.

Will lie to compel sheriff to levy execution, *State ex rel. Lewis v. Hodge* 90 W. 487.

Supreme court will not grant writ in first instance—will not lie to compel official conduct generally, *State ex rel. Pacific Am. Fisheries Co. v. Darwin* 81 W. 1.

Will not lie to compel state superintendent of schools to make apportionment of funds for attendance during summer vacations, *State ex rel. School Dis. No. 301 v. Preston* 84 W. 79.

Will lie to compel mayor to approve contractor's bond in local improvement, *State ex rel. Independent Asphalt P. Co. v. Gill* 87 W. 201.

Will lie to compel court to vacate order for change of venue, *State ex rel. Nash v. Superior Court* 82 W. 614.

Will not lie to compel condemnation, damage having been done by regrade, *State ex rel. Whitten v. Spokane* 92 W. 667.

Will lie in case of capricious reduction by county commissioners of court commis-

fault of legal duty, *Northwestern Warehouse Co. v. Oregon Ry. & Nav. Co.* 32 W. 218.

Mandamus will not lie to compel sheriff to release exempt property in attachment, *State ex rel. Hill v. Gardner* 32 W. 550.

Appeal will lie regardless of amount in controversy, *State ex rel. Dudley v. Daggett* 28 W. 1.

If appeal will not lie mandamus will not lie to compel superior court to take jurisdiction, *State ex rel. Wallace v. Superior Court* 24 W. 604.

Mandamus should not issue to compel issuance of telephone directory when answer avers defendant is compiling directory to be published before time sought by mandamus, *State ex rel. Bauer v. Superior Court* 30 W. 676.

stoner's salary, *State ex rel. Yeargin v. Maschke* 90 W. 249.

Will lie to compel court to proceed to final judgment, *State ex Murphy v. Court*, 73 W. 507.

Will lie to compel city warrant for damages in eminent domain, *State ex Murray v. Herdlick* 73 W. 301.

Will lie to compel court to enter proper judgment on verdict of not guilty, *State ex Gabe v. Main*, 66 W. 381.

Will lie to compel public officers to make estimates for public work, *State ex Warehouse etc. Co. v. Spokane*, 65 W. 385.

Will not lie to compel state officers to collect industrial insurance tax as a control of discretion, *State ex Rosbach v. Pratt*, 68 W. 157.

Complainant of crime may mandamus committing magistrate to act—visiting judge not required to return to answer mandamus, *State ex rel. Romano v. Yakey* 43 W. 15.

Part of relief may be granted—costs, *State ex rel. Maltbie v. Will* 54 W. 453.

Will not lie to compel court to proceed when necessary parties ordered are not brought in the latter being inherent power and discretionary, *In re Clerk* 55 W. 465.

Corporations, remedy against before or after judgment, when, *State ex rel. Dyer v. Middle Kittitas Irr. Dist.* 56 W. 488.

Will not lie to control discretion in the conduct of business of a court as where the issues in one action are dependent on another, *State ex rel. McDonald v. Steiner* 44 W. 150.

Writ applicable alike to ministerial and discretionary acts, *State ex rel. Gillette v. Clausen* 44 W. 437.

Will lie against State Dental Board and is concurrent with other remedies, *Stern v. Board* 50 W. 100.



Will not lie to compel Secretary of State to certify belated nominations, State ex rel. Socialist Party v. Nichols 51 W. 19.

Dismissed on appeal when amount less than \$200, ex rel. Lack v. Meads 49 W. 468.

Validity of law determined—fruit inspection invalid, State ex rel. Egbert v. Blumberg 46 W. 270.

Will lie to compel issuance of drainage warrant, State ex rel. Barto v. Drainage Dist. 46 W. 474.

Will lie to compel city council to canvass election returns, State ex rel. Harvey v. Mason 45 W. 234.

Will not lie to compel judge to proceed when refusal made for supposed want of jurisdiction, State ex rel. Piper v. Superior Court 45 W. 196.

Will lie to compel quasi judicial duty as canvass by council of election returns—costs, State ex rel. Howe v. Kindall 44 W. 542.

Action to compel city to pay judgment will not be defeated by deposit in court with prayer that it be returned, State ex rel. Cook v. Fairley 45 W. 52.

Granted to compel city council to submit referendum charter amendment—constitutional questions may be raised in—election held but case remanded—case remanded to examine petitions, Hindman v. Boyd 41 W. 17.

Writ will not lie to enforce private contract with public service corporation, State ex rel. Krutz v. Washington Irrigation Co. 41 W. 283.

Writ will lie to compel local improvement reassessment—defense of part payment and holders not privies—laches, Waldron v. Snohomish 41 W. 566.

Writ will not lie to compel secretary of state to file articles of incorporation contravening law, State ex rel. Osborne, Tremper & Co. v. Nichols 38 W. 309.

Writ will not lie to compel superior court to proceed with trial pending appeal from interlocutory order where before the hearing the appeal was determined, State ex rel. Oudin etc. Co. v. Superior Court 37 W. 30.

Writ will not lie to compel inspection of records not required to be kept though kept at public expense—demand for inspection too broad, State ex rel. Cook v. Reed 36 W. 638.

Action not removable to federal court, Kelly v. Grand Circle W. of W. 129 Fed. 830.

Writ will lie to compel issuance of warrant for salary of school teacher—will issue to enforce disputed claim, State ex rel. Brown v. McQuade 36 W. 579.

Writ will lie against judge quashing execution directed by supreme court—demurrer and answer must be presented at same time, State ex rel. Jefferson County v. Hatch 36 W. 164.

Mandamus will lie to compel county auditor to issue second warrant to party entitled when first diverted by forged indorsement—parties, American Bridge Co. v. Wheeler 35 W. 40.

Writ will not lie to compel additional levy of tax to pay city warrants when sufficient levy has been made but not collected, State ex rel. Freehold Land etc. Co. v. Muttly 39 W. 624.

Writ will not lie to compel state land

commissioner to re-submit lease of state lands, State ex rel. Pelton v. Ross 39 W. 399.

Writ will not lie to compel public officers to prosecute violators of law, State ex rel. Hawes v. Brewer 39 W. 65.

Writ will lie to compel state land commissioner to accept rent on state lands, State ex rel. Russell v. Callvert 33 W. 380.

Writ will issue on affidavit—summons not necessary, Smith v. Ormsby 20 W. 396.

Reasons for writ must be stated in writ or petition served therewith, State ex rel. Wolf v. Moore 15 W. 432.

Will issue to compel city comptroller to issue salary warrant to de facto officer, State ex rel. Dudley v. Daggett 28 W. 1.

Will issue to compel county auditor to draw warrant in favor of a contractor when amount has been properly certified to him, State ex rel. Dahlquist v. Van Wyck 20 W. 39.

Mandamus is not the remedy where there is issue as to whether one has been illegally removed from office, Kimball v. Olmstead 20 W. 629.

Mandamus will issue to compel county commissioners to levy tax on irrigation district to pay interest on bonds in default of district directors to levy and district is not necessary party when bonds have been declared valid in another proceeding, nor is demand on him necessary when they have lost power by lapse of time, State ex rel. Witherop v. Brown 19 W. 383.

Street railway company cannot discontinue the exercise of franchise without the consent of granting power or if operating without grant, mandamus will issue at the instance of any citizen to compel cars to be operated, State ex rel. Grinsfelder v. Spokane Street Ry. 19 W. 518.

Mandamus is proper remedy to compel payment of city warrants though their validity is questioned, Bacon v. Tacoma 19 W. 674.

That judgment is beyond debt limit is no defense, Smith v. Ormsby 20 W. 396; Lorence v. Bean 18 W. 36.

Mandamus will issue to compel convention officers to certify candidates, State ex rel. Cann v. Moore 23 W. 115.

Mandamus will not lie to compel county commissioners to award county printing as appeal is remedy, State ex rel. DeRackin v. Allen 8 W. 168.

Mandamus will not lie to compel county commissioners to issue funding bonds when they have any of discretionary power yet to perform, Morris & Whitehead v. Williams 23 W. 459.

County commissioners may mandamus county auditor to extend tax levy, State ex rel. Ross v. Headlee 22 W. 126.

Mandamus to protect private interest is properly brought on relation of the state, State ex rel. Weinberg v. Pacific Brg. Co. 21 W. 451.

Mandamus will lie by stockholder to inspect books of corporation—showing necessary, *Id.*

Mandamus will not lie to compel State Land Commissioner to convey tide lands while motion to vacate judgment on prior right to purchase is pending, State ex rel. Kinnear v. Bridges 21 W. 591.

Mandamus will not lie to compel State

Auditor to draw warrant when he may reject claim, State ex rel. Davey v. Cheetam 20 W. 64.

Void injunction is not defense—city not a necessary party to compel treasurer to pay city warrant, Savage v. Sternberg 19 W. 679.

Mandamus will not lie to compel county commissioners to allow claim of justice's salary there being appeal, State ex rel. Banks v. Snohomish County 18 W. 160.

Mandamus will lie against city to compel levy of tax to pay judgment for tort, Lorence v. Bean 18 W. 36.

Mandamus will lie at suit of wife to compel exemptions to be set aside, State ex rel. Achey v. Creech 18 W. 186.

Mandamus will lie to compel the payment of warrants by city treasurer—validity of re-issued warrants, Bardsley v. Sternberg 17 W. 243; 18 W. 612.

Costs should be taxed against real party in interest, State ex rel. Middlebrook v. Reid 17 W. 267.

Mandamus or action in equity will lie to compel levy of local street assessment, German-American Svgs. Bank v. Spokane 17 W. 315.

Mandamus will lie only at instance of party at interest so two school directors cannot compel the board to sign warrants, State ex rel. Starrett v. James 14 W. 82.

Mandamus will not lie to compel county treasurer to pay money collected by predecessor which has not come into his pos-

session, State ex rel. Thayer v. Mish 13 W. 302.

Mandamus will not lie to compel issuance of teacher's certificate, State ex rel. Gannon v. Hitt 13 W. 547.

Mandamus will not lie to compel mayor of city to sign bonds beyond debt limit, Chalk v. White 4 W. 156.

Mandamus will lie to compel city council to issue certificate of election though one has issued—council cannot go behind returns, State ex rel. King v. Trimbell 12 W. 440.

Mandamus will lie to compel officer to draw warrant to satisfy judgment—facts necessary—affidavit, Chapin v. Port Angeles 31 W. 535.

Mandamus will lie to compel county treasurer to accept redemption by owner of undivided interest in land from delinquent tax sale, State ex rel. McClaine v. Reed 29 W. 383.

Mandamus will not lie to compel sheriff to make return of execution when he had been ordered to hold return, State ex rel. Coml. Inv. Co. v. Hartman 26 W. 524.

Mandamus will not lie to compel city to pay local improvement warrant out of general fund an action being necessary to establish city's liability, Quaker City Bank v. Tacoma 27 W. 259.

Mandamus will not lie to compel city to levy special tax when it has levied but has failed to collect, Gay v. New Whatcom 26 W. 389.

**§8188. Jurisdiction of Supreme Court to Issue. §689.** Writs of mandate and prohibition may issue from the supreme and superior courts, of the state, but such writs shall issue from the supreme court only when necessary for the exercise of its functions and powers. In the superior court the writ may be made returnable either incourt, or before the judge at chambers, and may be tried before the court or judge. L. '91 41.

Supreme court directed superior court to try facts, State ex rel. Shores v. Ross 44 W. 246.

Will not lie to compel superior court to take jurisdiction of cause on change of venue, State ex rel. Hubbard v. Superior Court 24 W. 438.

Mandamus will not lie to compel superior court to redocket appeal from state land commissioners made after time had expired, State ex rel. Washington D. & Imp. Co. v. Moore 21 W. 629.

Mandamus will not lie to compel confirmation of sale on execution, State ex rel. Hibbard v. Superior Court 21 W. 631.

Where defendant's city officers appealed from order directing them to issue warrants and failed to comply mandamus will not lie to compel court to try contempt, State ex rel. Light Co. v. Superior Court 20 W. 502.

Mandamus will not lie to compel jurisdiction of delinquent tax forfeiture after dismissal of action, State ex rel. Barber v. Hadley 20 W. 520.

Mandamus will lie to compel jurisdiction by receiver of insolvent corporation when refused because federal bankruptcy had superseded jurisdiction, State ex rel. Strohl v. Superior Court 20 W. 545.

New trial for one defendant is for all and mandamus will not lie to compel judgment against part of defendants, State ex rel. Holgate v. Superior Court 19 W. 114.

Mandamus is not the remedy to try title

to an office, Lynde v. Dibble 19 W. 328.

Mandamus will lie to compel court to take jurisdiction when it holds it has not, State ex rel. Smith v. McClinton 17 W. 45.

Mandamus will not lie to compel superior court to take jurisdiction of appeal from justice four months after refusal to take jurisdiction, 15 W. 314.

Mandamus will not lie to compel nunc pro tunc order substituting attorneys, State ex rel. Gordon Hdw. Co. v. Langley 13 W. 636.

Mandamus will not lie against two judges of King County, State ex rel. Hill v. Superior Court 4 W. 327.

Mandamus will lie to compel judge taking case to complete it, State ex rel. Hill v. Lichtenberg 4 W. 553.

Mandamus will not lie to compel court to proceed if appeal has been taken, State ex rel. Miller v. Lichtenberg 4 W. 653.

Mandamus will lie to compel court to reinstate attorney suspended, State ex rel. Rhode v. Sachs 2 W. 373.

Alternative writ will not issue unless petition makes prima facie case for peremptory writ, Parrish v. Reed 2 W. 491.

Mandamus will lie to compel superior court to proceed when it has ordered stay because action pending in another state, State ex rel. Puget Sound Nat. Bank v. Superior Court 4 W. 686.

Mandamus will lie to compel superior court to proceed that appeal may become



effective, State ex rel. Smith v. Parker 12 W. 685.

Application for mandamus against state officer must contain statement of the case before such officer, State ex rel. Smith v. Forrest 11 W. 158.

Mandamus will not lie to compel superior court to take jurisdiction of contest of will, appeal being the remedy, State ex rel. Stratton v. Tallman 29 W. 317.

**§8189. Writ When No Remedy in Ordinary Course—Application for Writ.** §17. The writ must be issued in all cases where there is not a plain, speedy, and adequate remedy, in the ordinary course of law. It must be issued upon affidavit, on the application of the party beneficially interested.

Verified complaint is sufficient for alternative writ, State ex rel. Adams v. Irwin 74 W. 589.

**§8190. Writ Alternative or Peremptory.** §18. The writ may be either alternative or peremptory. The alternative writ must state generally the allegation against the party to whom it is directed, and command such party, immediately after the receipt of the writ, or at some other specified time, to do the act required to be performed, or to show cause before the court, at a specified time and place, why he has not done so. The peremptory writ must be in some similar form, except the words requiring the party to show cause why he has not done as commanded must be omitted, and a return inserted.

Informalities of writ disregarded, State ex Preudential S. & L. Assn. v. Martin 101 W. 350.

Peremptory writ prior to judgment is premature, State ex rel. Billings v. Lamprey 57 W. 84.

Second alternative writ may issue—affidavit attached may show right of relator, State ex rel. King v. Trimbell 12 W. 440.

Alternative writ not granted unless petition makes prima facie case for peremptory writ, Parrish v. Reed, 2 W. 291.

Writ must contain allegations of or refer to affidavit—demurrer, Chapin v. Port Angeles, 31 W. 535.

Mandamus and injunction cannot be joined, Times Pub. Co. v. Everett, 9 W. v. Moss, 13 W. 42.

**§8191. Only Alternative Writ Without Notice—Notice—No Default.** §19. When the application to the court is made without notice to the party, and the writ be allowed, the alternative must be first issued; and if the application be upon due notice and the writ be allowed, the peremptory writ may be issued in the first instance. The notice of the application, when given, must be at least ten days. The writ cannot be granted by default. The case must be heard by the court, whether the adverse party appear or not.

Writ not granted by default, State ex rel. Goss v. Metaline Falls L. & W. Co. 80 W.

No answer made and peremptory writ Reid 17 W. 688.

**§8192. Answer.** §20. On the return of the alternative, or the day on which the application for the writ is noticed, the party on whom the writ or notice has been served may show cause by answer, under oath, made in the same manner as an answer to a complaint in a civil action.

Answer to complaint in civil action, §§8346, 8351.

Waiver of defects by answering, State issued, State ex rel. Middlebrook etc. v. 518.

Affidavit held sufficient answer, State ex rel. Hallett v. Seattle Lighting Co. 60 W. 81.

Defendant may both demur and answer, State ex rel. Trickel v. Superior Court 52 W. 13.

Failure to demur to alternative writ for not showing petitioner entitled to relief is waived by answering, State ex rel. Abernethy v. Moss 13 W. 42.

**§8193. Trial of Questions of Fact—Damages.** §21. If an answer be made which raises a question as to a matter of fact essential to the determination of the motion, and affecting the substantial rights of the parties, and upon the supposed truth of the allegation of which the application for the writ is based, the court may, in its discretion, order the question to be tried before a jury, and postpone the argument until such trial can be had, and the verdict certified to the court. The question to be tried must be distinctly stated in the order for trial, and the county must be designated in which the same shall be had. The order may also direct the jury to assess any damages which the appellant may have sustained, in case they find for him.

Trial by jury, §§8476, 8489.

Court may summon jury and not wait

for regular panel, State ex rel. King v. Trimbell 12 W. 441.

**§8194. Reply of Applicant. §22.** On the trial the applicant is not precluded by the answer from any valid objections to its sufficiency, and may countervail it by proof, either in direct denial or by way of avoidance.

Reply generally, §8363.

Not necessary to reply, *State ex rel. Brown v McQuade* 36 W. 579.

Reply must be made to answer, *Wilson v. Aberdeen* 25 W. 614.

Denial of writ by lower court will not be reviewed on appeal when record is not brought up—that answer does not constitute defense cannot be raised first time on appeal, *id.*

**§8195. New Trial. §23.** The motion for new trial must be made in the court in which the issue of fact is tried.

New trial generally, §8224.

**§8196. Clerk of Trial Court Must Make Return. §24.** If no notice of a motion for a new trial be given, or if given, the motion be denied, the clerk, within five days after rendition of the verdict or denial of the motion, must transmit to the court in which the application for the writ is pending, a certified copy of the verdict attached to the order of trial; after which either party may bring on the argument of the application, upon reasonable notice to the adverse party.

**§8197. Hearing—Demurrer—Sham Answer. §25.** If no answer be made, the case must be heard on the papers of the applicant. If the answer raises only questions of law, or puts in issue immaterial statements not affecting the substantial rights of the party, the court must proceed to hear or fix a day for hearing the argument of the case.

Demurrer is motion to quash and is proper, *State ex rel. Hawes v. Brewer* 39 W. 65.

**§8198. Damages and Costs—Peremptory Writ. §26.** If judgment be given for the applicant he may recover the damages which he has sustained, as found by the jury or as may be determined by the court or referee, upon a reference to be ordered, together with costs; and for such damages and costs an execution may issue; and a peremptory mandate must also be awarded without delay.

Salary of city employee reinstated may be included in judgment, *State ex rel. Roe v. Seattle* 88 W. 589.

Costs in special proceedings, §7473.

Remedy against sheriff for failure to

allow exemptions is damages or mandamus and damages. If damages not claimed in mandamus separate action will not lie, *Achey v. Creech* 21 W. 319.

**§8199. Service of Writ. §27.** The writ must be served in the same manner as a summons in a civil action except when otherwise expressly directed by order of the court. Service upon a majority of the members of any board or body is service upon the board or body, whether at the time of the service the board or body was in session or not.

Service of summons, §8438.

Writ need not be certified—date wrong

immaterial, *State ex Hackett v. Arnest* 100 W. 286.

**§8200. Enforcement of Writ by Fine and Imprisonment. §28.** When a temporary mandate has been issued and directed to any inferior tribunal, corporation, board or person upon whom the writ has been personally served, has without just excuse, refused or neglected to obey the same, the court may, upon motion, impose a fine not exceeding one thousand dollars. In case of persistence in a refusal or disobedience, the court may order the party to be imprisoned until the writ is obeyed, and may make any orders necessary and proper for the complete enforcement of the writ.

Subsequent garnishment or injunction do not affect mandamus, *State ex O'Neill v. Wallace* 101 W. 410.

## MORTGAGE FORECLOSURE.

Execution sales §7903.

Registered land §5790.

**§8201. Venue of Foreclosure. §609.—609.** When default is made in the performance of any condition contained in a mortgage, the mortgagee or his assigns may proceed in the superior court of the county where the land or some part thereof, lies, to foreclose the equity of redemption contained in the mortgage.

Mortgagee cannot recover possession before foreclosure and sale, §7530.

Act prohibiting deficiency judgment, '97 §7904.

p 98, declared unconstitutional; *Dennis vs. Moses*, 18 Wash., 537.

Deficiency judgments by agreement,



Receiver can not be appointed for mortgaged property—*Norfor vs. Busby*, 19 Wash., 450.

Taxes paid are chargeable as part of claim, §6978.

Venue changed court shall enter judgment—foreclosure refused for fraud, *Shedden v. Sylvester* 88 W. 348.

Parol evidence admissible to show real transaction, *Harbican v. Skinner* 83 W. 596.

Two deeds of lands in two counties may be foreclosed by an action in either county, *Empire State Co. v. Siefert*, 66 W. 76.

Creditors (lessors) with improved claims cannot intervene in mortgage foreclosure by lessee an insolvent corporation, *Hindman v. Colvin* 47 W. 382.

Purchaser at void foreclosure becomes mortgagee in possession—heirs not made parties—mortgage to be paid, *Sawyer v. Vermont Loan & Tr. Co.* 41 W. 524.

Void foreclosure makes purchaser mortgagee in possession—mortgagor's action—rents—accounting—improvements, *Sloane v. Lucas* 37 W. 348.

Death does not raise statute of limitation against mortgage, *Frew v. Clark* 34 W. 561.

Mortgagee having knowledge of prior lien foreclosed is not estopped if not made a party—assignee, *Keene Guar. Svcs. Bank v. Lawrence* 32 W. 572.

Parties may voluntarily submit question of permanent title in foreclosure, *Coolidge v. Schering* 32 W. 557.

Second foreclosure can not be had on property omitted though omission by mistake, *Dooly v. Eastman* 28 W. 564.

Mortgage made prior to patent may be foreclosed after patent issues, *Weber v. Laidler* 26 W. 144.

Claim for damage done to property as in grading street belongs to mortgagor subject to right of mortgagee to claim damage to extent of satisfaction of mortgage, *In re Seattle* 26 W. 602.

Mortgage executed by one of three co-obligors the other two executing a bond to secure payment is absolute obligation of all to pay, *Hanna v. Savage* 7 W. 414.

Acceptance of part money, notes of sureties on appeal bond secured by assignment of sheriff's certificate of sale of mortgaged property is an abandonment of the original mortgage, *Hanna v. Reeves* 22 W. 6.

Evidence must be confined to issues, hence, plaintiff cannot predicate error on court's refusal to admit evidence of will and letters of deceased and notice to creditors to show property is charged, *Van Dusen v. Kelleher* 25 W. 315.

Questions of paramount title can not be tried so wife is not concluded though a party, by finding that property is separate property of husband, *Oates v. Shuey* 25 W. 597.

Mortgagee not a party to street assessment foreclosure is in position of junior mortgagee and may redeem at any time within six years, *Krutz v. Gardner* 25 W. 396.

Mortgagee not compelled to exhaust other security before applying mortgage—charge of fraud in procuring mortgage not sustained, *Hersner v. Martin* 8 W. 698.

Second mortgagee though mortgage con-

tains recitals that it is second may impeach first for non-delivery or want of consideration, *Ault v. Blackman* 8 W. 624.

Two notes assigned to different parties secured by same mortgage are on equal footing, *First Nat'l. Bank v. Andrews* 7 W. 261.

Deed under the facts held not to be mortgage, *Dignan v. Moore* 8 W. 312.

In foreclosure of purchase money mortgage mortgagor may counterclaim his expense in defending ejectment, *Potwin v. Blasher* 9 W. 460.

Mortgagee with notice of land omitted from prior mortgage may be prior by parol agreement, *Packard v. Dufel* 9 W. 562.

Strict foreclosure is not authorized in this state, nor is equity of redemption, *Dane v. Daniel* 23 W. 379.

Foreclosure is not *res judicata* of damage for retaining part of loan agreed on—measure of damages, *McGee v. Wineholt* 23 W. 748.

Light, fixtures, window curtains, screen doors, etc., are not fixtures, *Hall v. Law Guarantee & T. Society* 22 W. 305.

Window and door jambs, wainscoting, etc., are personalty by agreement if attached after mortgage, *German Svcs. & Loan Society v. Weber* 16 W. 95.

Planer in sawmill on conditional sale is not fixture, *Cherry v. Arthur* 5 W. 787.

Stock mantels, hot water heaters and bath tubs are not fixtures—intent of person affixing or of their necessity in house material, *Philadelphia Mtge. & Tr. Co. v. Miller* 20 W. 607.

In foreclosure of pledge of stock defendant may set up paramount title, *Washington Nat'l. etc. Assn. v. Saunders* 24 W. 321.

Mortgage void, equitable lien is not created, *Hill Estate Co. v. Whittlesey* 21 W. 142.

If holder of one of two notes secured by same mortgage takes deed he may intervene and share in proceeds in foreclosure by the other, *Stewart v. Eaton* 20 W. 378.

Agreement that 25 per cent. of money realized from lands mortgaged and other lands described does not create equitable lien on lands not mortgaged, *Hossack v. Graham* 20 W. 184.

Mortgagor can not set off balance on mutual account in foreclosure, *Peterson v. Johnson* 20 W. 497.

Defense of forgery failed, *Oregon Mtge. Co. v. Estes* 20 W. 659.

Where action was brought on assigned second mortgage setting up also fact that second was in lieu of first and defendant given option of having first foreclosed, he cannot plead its discharge and it will be considered assigned, *Conklin v. Buckley* 19 W. 262.

Foreclosure on several notes may be stated as one cause, *Seattle Trust Co. v. Kerry* 19 W. 389.

Mortgage to become due on contingency or if property abandoned for church purposes is valid—sale on execution is abandonment, *Board v. First Presbyterian Church* 19 W. 455.

Real property conveyed is not subject to vendor's lien unless contracted for, *Smith v. Allen* 18 W. 1.

Oral agreement to assume mortgage



debt may be enforced, *Ordway v. Downey* 18 W. 412.

Delivery of deed to mortgagee subject to approval of title by attorney is not satisfaction, and does not affect collection of insurance, *Pioneer etc. Loan Co. v. Providence etc. Co.* 17 W. 175.

Purchase money mortgage is superior to judgment lien, *Bisbee v. Cary* 17 W. 224.

Expenses of railway are superior to prior mortgage, *Bellingham Bay Imp. Co. v. Fairhaven Ry.* 17 W. 371.

If mortgagee has taken by mistake as to second mortgage, he may be restored, *Nommenson v. Angee* 17 W. 394.

Allegation that defendant has "some interest" is not allegation of adverse title—tax title is paramount, *Kizer v. Caulfield* 17 W. 417.

Vendor's lien on land passed with assignment of promissory note for purchase price, *National Bank of Commerce v. Lock* 17 W. 529.

Vendor may make purchase money mortgage subsequent to another, *Skill v. Christenson* 17 W. 649.

Purchase by mortgagee at void foreclosure sale operates as assignment of mortgage to his vendee—vendee is necessary party to set aside foreclosure, *Smithson Land Co. v. Brautigam* 16 W. 174.

Mortgagee's priority and merger by deed, *Hitchcock v. Nixon* 16 W. 281.

Mortgage to secure bondholders who are original stockholders should be postponed to general creditors, *Manhattan Trust Co. v. Seattle Coal & Iron Co.* 16 W. 499, but see *S. C.* 19 W. 493.

Mortgagee is not entitled to share in condemnation award after redemption period—is entitled to award made after and to him—mortgage of land in two counties foreclosed in either—attorney's fee greater than terms of notes allowed, *Commercial Nat'l. Bank v. Johnson* 16 W. 536.

Default on conjunctive conditions are separable—priority of liens and title and mortgage triable, *Johnson v. Irwin* 16 W. 652.

Mortgagee entitled to have issue of priority between mortgage and title other than that of mortgagor determined, *Pennsylvania Mtge. Co. v. Gilbert* 13 W. 684.

Increased rate of interest as penalty for non-payment cannot be enforced, *Krutz v. Robbins* 12 W. 7.

Sufficient complaint in foreclosure, *Bethel v. Robinson* 4 W. 446.

Trustee in mortgage should foreclose though he has not legal title to notes, *Thompson v. Huron Lumber Co.* 4 W. 600.

Assignee of mortgage with one note has priority over holder of another note secured by same mortgage, *Miller v. Washington Svgs. Bank* 5 W. 200.

§8202.

**When Remedy Limited to Property Mortgaged.** §610.—610. When there is no express agreement in the mortgage, nor any separate instrument given for the payment of the sum secured thereby, the remedy of the mortgagee shall be confined to the property mortgaged.

If notes cancelled on foreclosure without deficiency judgment there is no remedy against other collateral, *Bank of California v. Dyer* 14 W. 279.

§8203. **Judgment—Order of Sale—Costs.** §611.—611. In rendering judgment of foreclosure the court shall order the mortgaged premises, or so much thereof as may be necessary, to be sold to satisfy the mortgage and

Surrender of possession to mortgagee is not defense to action on note, *Dewing v. Crueger* 7 W. 590.

Community property and separate property of husband are liable for deficiency judgment if mortgage was assumed, *Solicitors' L. & G. Co. v. Robbins* 14 W. 507.

The part of mortgaged property mortgaged second time, though done by absolute deed and conveyance, is again made to third party with notice is to be sold first in foreclosure of first mortgage, *Stulb v. Ainslee* 14 W. 567.

Deed to mortgagee with right to redeem is not mortgage, but absolute subject to condition, *Swarm v. Boggs* 12 W. 246.

Mortgagee in possession cannot be ejected nor receiver appointed, though he is committing waste unless he is insolvent, *Brundage v. Home etc. Assn.* 11 W. 277.

Brewery machinery held fixtures though vendor and vendee had agreed to the contrary, *Wade v. Donan Brg. Co.* 10 W. 285.

Mortgagee without notice has priority over receivership of partnership in lands mortgaged by partner with legal title, *Richmond v. Voorhees* 10 W. 316.

Assignee of mortgage obtaining assignment by attorney of mortgagor cannot foreclose for more than amount actually paid, *Security Svgs. Soc. v. Cohalan* 31 W. 266.

Foreclosure for more than mortgage with agreement by mortgagee to declare trust in favor of mortgagor to defeat other lienors action on such declaration present no equity, *Snipes v. Kelleher* 31 W. 386.

Warranty deed may be shown to be a mortgage, *Ross v. Howard* 31 W. 393.

Deed to mortgagee in ignorance of judgment lien, mortgage will be revived, *Woodhurst v. Cramer* 29 W. 40.

Mortgage of unoccupied upland with "appurtenances" does not pass abutting tide-land and wharf—insurance policy on such wharf properly assigned is additional security, *Book v. West* 29 W. 70.

Foreclosure cannot be collaterally attacked because another action is pending, *Rorer v. Snyder* 29 W. 199.

An equivocal mortgage held not to be installment to authorize foreclosure, *Bank v. Doherty* 29 W. 233.

Vendor may foreclose vendee on his failure to comply with contract in sale of land, *Wood v. Mastick* 2 W. 64.

Mortgage is lien only, *Parker v. Dacres* 2 W. T. 439.

Sham foreclosure held not to give party rights, *Conolly v. Cunningham* 2 W. T. 242.

Mortgagor cannot defeat purchase price mortgage by impugning title, *Kenworthy v. Merritt* 2 W. T. 155.

Foreclosure on parcels in several counties sustained, *Stevens v. Ferry* 48 Fed. Rep. 7.



costs of the action. The payment of the mortgage debt, with interest and costs at any time before sale, shall satisfy the judgment.

One sale for several mortgages foreclosed in one suit, *Du Pont, etc., Co. v. Virges* 94 W. 35.

Supplemental decree to cover liens, etc., paid after judgment, *Carstens & Earles v. Seattle* 88 W. 632.

Net rents, etc., after expenses belong to mortgagor's successor, *Gerber v. Heath* 92 W. 519.

Sale must be had in county where land situated, *Vietzen v. Otis* 46 W. 402.

If part of mortgaged property has been sold it shall be sold last, *Solicitors etc. Co. v. Washington etc. R. R. Co.* 11 W. 684.

When general execution is issued mortgaged property will be presumed sold, *Fuller & Co. v. Hull* 19 W. 400.

**§8204. Deficiency Judgment if Separate Agreement.** §613.—612. When there is an express agreement for the payment of the sum of money secured, contained in the mortgage or any separate instrument, the court shall direct in the decree of foreclosure that the balance due on the mortgage, and costs which may remain unsatisfied after the sale of the mortgaged premises, shall be satisfied from any property of the mortgage debtor.

Levy and sale for deficiency under foreclosure execution, *Codd v. Von Der Ahe* 92 W. 529.

Where printed clause for deficiency judgment erased, oral evidence admitted to show agreement prohibiting deficiency judgment, *Sappington v. Owens* 92 W. 632.

Deficiency judgment is authorized, *Shumway v. Orchard* 12 W. 104.

Personal judgment against wife is error on foreclosure of mortgage by her and husband to secure husband's note, *Exchange Nat. Bank v. Wolverton* 11 W. 108.

If mortgagee not personally served ac-

tion may be brought for deficiency, *Howard v. McNaught* 9 W. 355.

Prayer for general relief will authorize deficiency judgment, *Rogers v. Turner* 19 W. 399.

Where there has been no answer, plaintiff not entitled to deficiency decree if he has not asked for it in complaint, *Bank of Cal. v. Dyer*, 14 W. 279.

Deficiency judgment defective in form cannot be attacked collaterally, *Winch v. McLaren*, 9 W. 676.

Discharge in insolvency does not prevent subsequent deficiency judgment, *Leisure v. Kneeland*, 2 W. 527.

**§8205. Execution on Decree—Additional Levy.** §613.—613. The decree may be enforced by execution as an ordinary decree for the payment of money. The execution shall contain a description of the mortgaged property. The sheriff shall endorse upon the execution the time when he receives it, and he shall thereupon forthwith proceed to sell the mortgaged premises, (or so much thereof as may be necessary to satisfy the judgment, interest and, costs), upon giving the notice prescribed in §350 [7905] relating to sales of property under execution, and if any part of the judgment interest and costs remain unsatisfied, the sheriff shall forthwith proceed to levy upon any property of the defendant not exempt from execution, and all subsequent proceedings under said execution shall conform except as herein provided, to the provisions regulating sales of property upon executions.

Levy and sale as in execution, §§7893, 7900.

If mortgagor deceased, §9840.

If purchaser evicted may recover of plaintiff, §7901.

Sheriff should proceed with additional levy until execution is satisfied, *Hays v. Miller* 1 W. T. 143.

Mortgagee cannot claim rights incident to ownership as right to purchase tide lands by levying execution for deficiency on such lands, the right to purchase having been assigned by mortgagor before foreclosure, *Union Svgs. & L. Assn. v.*

*Byrne (C. C. A.)* 114 Fed. Rep. 831. Return to court for deficiency judgment not necessary, *Shumway v. Orchard*, 12 W. 104.

Sale not void for irregularities, *Stevens v. Ferry*, 48 Fed. 7.

Where part of premises previously conveyed, part remaining should be first sold to satisfy mortgage, *Solicitors, etc., Co. v. Wash., etc., Ry.*, 11 W. 684.

Foreclosure sale of land in another county not cured by confirmation, *Vietzen v. Otis*, 46 W. 402.

**§8206. Only One Action at a Time.** §614.—614. The plaintiff shall not proceed to foreclose his mortgage while he is prosecuting any other action for the same debt or matter which is secured by the mortgage, or while he is seeking to obtain execution of any judgment in such other action; nor shall he prosecute any other action for the same matter while he is foreclosing his mortgage or prosecuting a judgment of foreclosure.

Waiver of mortgage security, §7904.

Application to have condemnation award applied to mortgage deficiency is not prohibited, *Gray v. Davison* 78 W. 482.

Foreclosure does not raise limitation of

action on note, *Hinchman v. Anderson* 32 W. 198.

Party secured is not bound to first apply property absolutely conveyed before action on the note, *Frye v. Meyer* 22 W.

277.

Obtaining judgment on note does not preclude subsequent foreclosure of mort-

gage, *Hanna v. Kasson* 26 W. 568

Mortgagee may proceed on note alone, *Frank v. Pickle* 2 W. T. 55.

§8207.

**Execution for Installments.** §615.—615. Whenever a complaint is filed for the foreclosure of a mortgage upon which there shall be due any interest or installment of the principal, and there are other installments not due, if the defendant pay into the court the principal and interest due, with costs, at any time before the final judgment, proceedings thereon shall be stayed, subject to be enforced upon a subsequent default in the payment of any installment of the principal or interest thereafter becoming due. In the final judgment, the court shall direct at what time and upon what default any subsequent execution shall issue.

New summons not necessary for subsequent installments—paying any installment does not defeat foreclosure—attorney fee—insurance, *Strandell v. Strand* 82 W. 59.

67 W. 578.

Stay does apply if mortgagee has declared all due for default,, *Knisel v. Brunel* 60 W. 610.

A foreclosure decree may be entered determining the amount of installments then due and to become due, and providing for subsequent orders of sale to satisfy maturing installments, *Naden v. Christopher*,

Payment of installments due while others remain but are not yet due, proceedings will be stayed but not dismissed, *American L. & G. Co. v. Union Depot Co.* 80 Fed. Rep. 36.

**§8208. Sale in Parcels to Pay Installments.** §616.—616. In such cases, after final judgment, the court shall ascertain whether the property can be sold in parcels, and if it can be done without injury to the interests of the parties, the court shall direct so much only of the premises to be sold as will be sufficient to pay the amount then due on the mortgage with costs, and the judgment shall remain and be enforced upon any subsequent default, unless the amount due, shall be paid before execution of the judgment is perfected.

**§8209. Sale of All—Application of Proceeds.** §617.—617. If the mortgaged premises cannot be sold in parcels, the court shall order the whole to be sold, and the proceeds of the sale shall be applied first to the payment of the principal due, interest and costs, and then to the residue secured by the mortgage and not due; and if the residue do not bear interest, a deduction shall be made therefrom by discounting the legal interest; and in all cases where the proceeds of the sale shall be more than sufficient to pay the amount due and costs, the surplus shall be paid to the mortgage debtor, his heirs and assigns.

Proceeds to be applied to installments due and if more sold to installments not due, *Naden v. Christopher*, 62 W. 413.

**§8210. Provisions Apply to Chattel Mortgages.** §618.—618. The provisions herein contained, so far as the same shall be applicable, shall govern in actions for the foreclosure of chattel mortgages or bills of sale creating liens on personal property.

Foreclosure of chattel mortgage debt not yet due, §9758.

ly with foreclosure, *Advance Thresher Co. v. Schimke* 47 W. 162.

Attachment cannot be levied concurrent-

**§8211. Deficiency Judgment—Order of Sale and Execution.** §619.—619. The mortgagee or holder of the lien may proceed upon his mortgage or lien, if there be a separate obligation in writing to pay the same, secured by said mortgage or lien, he may bring suit upon such separate promise. When he proceeds on the mortgage, if there be a specific agreement therein contained for the payment of a certain sum, or there is a separate obligation for the said sum in addition to a decree of sale of mortgaged property, judgment shall be rendered for the amount due upon said mortgage or other instrument, the payment of which is thereby secured. The decree shall direct the sale of the mortgaged property and if the proceeds of said sale be insufficient under the execution, the sheriff is authorized to levy upon and sell other property of the mortgage debtor, not exempt from execution, for the sum remaining unsatisfied.

This section authorizes deficiency judgments in chattel foreclosures on notes, *Bradley Eng. & Mach. Co. v. Muzzy* 54 W. 227.

closure—mortgagor having disposed of his interest is not necessary party—purchaser cannot interpose against mortgagee's statement of third party holding mortgage as collateral, *Weir v. Rathbun* 12 W. 84.

Money judgment not necessary in fore-



**§8212. Further Levy and Sale.** §620.—620. In all actions of foreclosure where there is a decree for the sale of the mortgaged premises or property, and a judgment over for any deficiency remaining unsatisfied after applying the proceeds of the sale of mortgaged property, further levy and sales upon other property of the judgment debtor, may be made under the same execution. In such sales it shall only be necessary to advertise notice for two weeks in a newspaper published in the county where the said property is located, and if there be no newspaper published therein, then in the most convenient newspaper having a circulation in such county.

Execution for deficiency, §7904.

Levy and sale for deficiency under fore-

Deficiency judgment by agreement, §7904. closure execution, Codd v. Von Der Ahe 92

Two weeks' notice superseded, §7903. W. 529.

**§8213. Deficiency Judgments Are Lien.** §622.—622. Judgments over for any deficiency remaining unsatisfied, after application of the proceeds of sale of mortgaged property, either real or personal, shall be similar in all respects to other judgments for the recovery of money, and may be made a lien upon the property of a judgment debtor as other judgments, and the collections thereof enforced in the same manner.

### NAME, CHANGE OF.

**§8214. Person May Change His Name or That of His Child or Ward.** §635.—635. Any person desiring a change of his name or that of his child or ward may apply therefor to the superior court of the county in which he resides by petition setting forth the reasons for such change, thereupon such court in its discretion, may order a change of the name and thenceforth the new name shall be in place of the former.

Constitution prohibits special act, Const., art. 2, §28, cl. 1.

### NE EXEAT.

**§8215. Ne Exeat Based on Fraud and Agreement in Writing—Affidavit.** §636.—636. Actions may be commenced upon any agreement in writing, before the time for the performance of the contract expires when the plaintiff or his agent shall make and file an affidavit with the clerk of the proper court that the defendant is about to leave the state without performing or making provisions for the performance of the contract taking with him property moneys credits or effects subject to execution with intent to defraud plaintiff.

Remedy of surety, etc., on execution, §7902.

Refused defendant having given super-

Constitution prohibits imprisonment for

was community property, Holcomb v. Hol-

**§8216. Complaint.** §637. At the time of filing the affidavit the plaintiff shall also file his complaint in the action, and thenceforth the action shall proceed as other actions at law, except as otherwise provided in this chapter. L. '91 81.

**§8217. Bond by Plaintiff—Arrest and Bail.** §2. Upon such affidavit and complaint being filed, the clerk shall issue an order of arrest and bail, directed to the sheriff, which shall be issued, served, and returned in all respects as such orders in other cases; before such order shall issue, the plaintiff shall file in the office of the clerk a bond, with sufficient surety, to be approved by the clerk, conditioned that the plaintiff will pay the defendant such damages and costs as he shall wrongfully sustain by reason of the action, which sureties shall justify as bail upon an arrest.

Bond in arrest and bail, §7366.

**§8218. Defendant's Bond—Commitment.** §638. The sheriff shall require the defendant to enter into a bond, with sufficient surety, personally to appear within the time allowed by law for answering the complaint, and to abide the order of the court; and in default thereof the defendant shall be committed to prison until discharged in due course of law; such special bail shall be liable for the principal, and shall have a right to arrest and deliver him up, as in other cases, and the defendant may give other bail. L. '91 81.

**§8219. Security for Contract and Release of Defendant.** §639.—639. Instead of giving special bail, as above provided, the defendant shall be entitled to his discharge from custody if he will secure the performance of the contract to the satisfaction of the plaintiff.

**§8220. Sureties and Joint Obligors May Have Writ.** §640.—640. This proceeding may be had in favor of any surety or other person jointly bound with the defendant. It may also be prosecuted by the person in whose favor the contract exists, against any one or more of the persons bound thereby, upon filing such affidavit, when the co-contractors are non-residents or probably insolvent; or at the request of any of them when they are residents and solvent.

**§8221. Habeas Corpus as in Arrest and Bail.** §641.—641. The defendant may have the same remedy by writ of habeas corpus as in other cases of arrest and bail.

Habeas corpus to admit to bail, §8041.

**§8222. Justices of the Peace May Issue Writ.** §642. The proceedings provided for in this chapter may be had before justices of the peace in all cases within their jurisdiction. L. '91 81.

**§8223. Venue of Action.** §643.—643. The affidavit and bond may be filed, and proceedings had in any county where the defendants may be found.

### NEW TRIAL.

Criminal procedure §9341.

Evidence re-used, when §7770.

Mandamus, motion where trial had §8195.

Petition for new trial within one year §8131.

**§8224. New Trial Defined.** §275.—275. A new trial is a re-examination of an issue in the same court after a trial and decision by a jury, court or referees.

Vacation or modification of judgment, §8130.

New trial in criminal cases, §9341; in mandamus, §8195.

Courts have inherent power to grant new trials—discretion, *Sylvester v. Olson* 63 W. 285.

Court is without jurisdiction to consider second motion for new trial, *Kincaid v. Walla Walla Val. Traction Co.* 57 W. 334.

Successor of judge may grant new trial—discretion, *Carkonen v. Columbia & P. R. Co.* 102 W. 11.

Motion for new trial not necessary to secure review of rulings on trial, *Dubcich v. Grand Lodge A. O. U. W.* 33 W. 651.

Practice obtains in equity as at law, *State ex rel. Payson v. Chapman* 35 W. 64.

Motion for judgment non obstante and for new trial, granting of former is not disposition of latter on merits, *Paich v. Northern Pac. R. Co.* 88 W. 163.

**§8225. Grounds of New Trial.** §276. The former verdict or other decision may be vacated and a new trial granted, on the motion of the party aggrieved, for any of the following causes materially affecting the substantial rights of such party:

1. Irregularity in the proceedings of the court, jury or adverse party, or any order of the court, or abuse of discretion, by which such party was prevented from having a fair trial;

2. Misconduct of prevailing party or jury; and whenever anyone, or more of the jurors shall have been induced to assent to any general or special verdict to a finding on any question or questions submitted to the jury by the court, other and different from his own conclusions, and arrived at by a resort to the determination of chance or lot, such misconduct may be proved by the affidavits of one or more of the jurors;

3. Accident or surprise which ordinary prudence could not have guarded against;

4. Newly discovered evidence, material for the party making the application, which he could not with reasonable diligence have discovered and produced at the trial;

5. Excessive or inadequate damages appearing to have been given under the influence of passion or prejudice;

6. Error in the assessment of the amount of recovery, whether too large or too small, when the action is upon a contract, or for the injury or detention of property;

7. Insufficiency of the evidence to justify the verdict or the decision, or that it is against law;



8. Error in law occurring at the trial and excepted to at the time by the party making the application. L. '09 53.

New trial granted because of discovery of admissions against interest, *Roe v. Snyder* 100 W. 311.

Evidence not properly newly discovered and not likely to obtain different verdict, new trial properly denied, *Peters v. Casualty Co.* 101 W. 208.

In successive new trials supreme court will determine whether court or jury correct, *McCabe v. Lindberg* 99 W. 430.

Quotient verdict held misconduct, *United Iron Works v. Wagner* 98 W. 453.

Mistake in verdict, remedy is new trial, not reassembling jury, *Miles v. Mead* 98 W. 215.

Misconduct known, not called to attention of court is not ground, *Hopkins v. Copalis Lumber Co.* 97 W. 119.

Motion for new trial predicated on evidence already considered no basis of error, *In re King's Estate* 102 W. 299.

Judgment need not recite reason for new trial, *Nelson v. Pacific Coast Cas. Co.* 93 W. 43.

Counsel may reiterate irrelevant matter so as not to be curable by instructions, *Duval v. Inland Navigation Co.* 90 W. 149.

New trial if judgment non obstante not warranted, *Washington Trust Co. v. Keyes* 88 W. 287.

Properly denied for surprise when not claimed at trial nor continuance asked, *State v. Schrock* 92 W. 69.

Court may of its own motion any time before judgment correct errors, *Powelson v. Seattle* 87 W. 617.

Respondent may urge any ground to sustain judgment though not passed on, *Langley v. Devlin* 87 W. 592.

Where judgment non obstante erroneously entered after judgment and motion for new trial stricken, judgment will be vacated and hearing on motion for new trial ordered, *Paich v. Northern Pac. R. Co.* 86 W. 379; new trial only procedure, *McDonnell v. Shine* 86 W. 393.

New trial properly denied if evidence could have been submitted at first trial, *Burwell & Morford v. Barnes* 85 W. 153.

Discretion in granting new trial on misconduct of jury for quotient verdict sustained, *Gamer v. Schlentz* 84 W. 37.

Supreme court will consider all reasons advanced by mover to sustain new trial, *Pierce v. Seattle Elec. Co.* 83 W. 141.

Defendant must ask instruction against prosecuting attorney's remarks, *State v. Johnson* 83 W. 1.

Misconduct of counsel not ground unless court asked to instruct jury to disregard, *State v. Meyerkamp* 82 W. 607.

Reading law in jury room is misconduct, *Bouton-Perkins Lum. Co. v. Huston* 81 W. 678.

Motion for new trial considered after appeal, when, *Raske v. Northern Pac. R. Co.* 74 W. 155.

Persistent offers of evidence held not misconduct, *Munson v. Johnson* 80 W. 628.

Reduced verdict or new trial reversed only for abuse of discretion, *Jett v. Old National Bank Bldg. Co.* 79 W. 562; after judgment affirmed plaintiff cannot elect to accept reduced verdict, *id.* 82 W. 374.

Misconduct of judge in making personal

investigation and taking position contrary to experts ground for new trial' *Elston v. McGlaulin* 79 W. 355.

Repeatedly injecting into case the fact that defendant was insured, though jury instructed to disregard conduct, is ground for new trial, *Shay v. Horr* 78 W. 667.

Remarks of counsel not preserved in the record, appearing only in affidavit for new trial, will not be considered, *Loy v. Northern Pac. R. Co.* 77 W. 25; *State v. Jakubowski* *id.* 78.

Refusal of trial court to consider motion assuming that it should be granted, but that supreme court had power, is reversible error, *Brown v. Walla Walla* 76 W. 670; *Johnson v. Domer* 76 W. 677.

Evidence admissible is not ground of surprise, *Burger v. Covert* 75 W. 528.

Granted on specific ground all reasons may be urged anew in supreme court—no second appeal, *Rochester v. Seattle Renton & So. R. Co.* 75 W. 559; affirmed, *Langley v. Devlin* 87 W. 592.

Admission by defendant after trial of facts that should have been brought out in case is not newly discovered evidence, *McCanna v. Silke* 75 W. 383.

Calling other party who testified substantially as he had pleaded not ground for new trial, *Orr v. Schwager & Nettleton* 74 W. 631.

New witnesses denied they would testify as claimed, new trial properly denied, *Field v. Spokane, P. & S. R. Co.* 74 W. 356.

New trial on questions of law tried by court, *Clark v. Ellington* 86 W. 110.

If party surprised could have obtained information by bill of particulars or interrogatories new trial will be denied, *Potts v. Potts* 81 W. 27.

Inadequate damages in the sum of \$15 for death of minor child ground for new trial, *Bernard v. North Yakima* 80 W. 472.

Court's failure to exercise discretion, assuming it has not power, is error, *Crawford v. O'Shea* 75 W. 33.

Misconduct of counsel not excepted to is ground for new trial, *Cranford v. O'Shea* 75 W. 33.

Special verdicts, new trial may be granted as to part—judgment non obstante veredicto, *Auwarter v. Kroll* 79 W. 179.

Affidavit of juror cannot be received to impeach verdict, *Wagoner v. Warn* 88 W. 688.

Admitting evidence under a pleading that does not state a cause of action is error in law, *Smith Sand & Gravel Co. v. Corbin* 89 W. 43.

Entry of verdict is not entry of judgment and judgment non obstante proper procedure, *Mattson v. Griffin Transfer Co.* 90 W. 1.

Clerk's entry of judgment after motion for judgment non obstante held not a judgment, *Frescoln v. Puget Sound Tr. L. & P. Co.* 90 W. 59.

No judgment non obstante veredicto after judgment entered by clerk—form of entry, *Paich v. Northern Pac. R. Co.* 86 W. 379; *McDonnell v. Shine* 86 W. 393; *Carkonen v. Columbia & P. S. R. Co.* 86 W. 473, *id.* 89 W. 104.

Evidence within issues is not ground of

surprise, *Hardman Estate v. McNair* 61 W. 74.

Judge differing with witnesses on extent of damage not ground, *In re Renton* 61 W. 330.

For error in granting non-suit or excluding evidence, *Merritt v. Hibbard* 61 W. 368.

Later requirements of immediate entry of judgment does not destroy extension of time of motion for new trial, *McCallister v. Seattle B. & M. Co.* 44 W. 179.

Defense waived cannot be interposed after appeal, *Mantle v. Dabney* 44 W. 193.

Insufficiency of evidence not ground though only one witness and she is shown false in one fact, *Plattor v. Seattle Elec. Co.* 44 W. 408.

Misconduct of attorney in commenting on subject excluded by the court, *Hanstad v. Canadian Pac. R. Co.* 44 W. 505.

Terms imposed on granting, *Seaton v. Cook*, 45 W. 27.

Newly discovered evidence held sufficient, *Binns v. Emery* 45 W. 215.

May be granted for excessive verdict though offer is made to remit a part—several grounds, any may support order, *Prosch v. Seattle* 46 W. 553.

Errors of law are reviewable; do not involve discretion of trial court, *La Bee v. Sultan Logging Co.* 47 W. 57.

Counsel repeating comment of judge is misconduct—not cured, *Spencer v. Arlington*, 49 W. 121.

Record disclosed new trial reviewable on points of law and excluding discretion, *Gregg v. Northern Pac. R. Co.* 49 W. 183.

Refusal where no diligence shown, sustained no abuse of discretion shown, *Goodrich v. Kimble* 49 W. 516.

Counsel commented on failure of plaintiff to allow physician to testify, held misconduct, *Kichhloef v. Washington W. P. Co.* 49 W. 646.

Specific ground for granting need not be stated—ground cannot be shown by affidavit on appeal, *Best v. Seattle* 50 W. 533.

Surprise at decision of court is not ground for new trial, *Jensen v. Spokane Falls* 51 W. 448.

New trial discretionary, *Colvin v. Nor. Pac. R. Co.* 42 W. 5.

Verdict not impeached by affidavit of juror showing jury considered extraneous matter withdrawn by instructions, *Ralton v. Sherwood Logging Co.* 54 W. 254.

Instructions to jury in advisory verdict in equity is in discretion of court, *Pealer v. Grays Harbor Boom Co.* 54 W. 415.

Should not be granted where evidence without conflict sustains verdict—reversed on appeal, *Galena Nat. Bank v. Ripley* 55 W. 615.

Correct recovery capable of mathematical calculation refusal of new trial on condition of remitting part of verdict is discretionary, *Meza v. Pfister Co.* 54 W. 7.

Conditional grant of becomes effective without further order, *Winningham v. Philbrick* 56 W. 38.

Assertion of counsel that time-worn plea of contributory negligence is interposed is not misconduct, *Buckles v. Reynolds* 58 W. 485.

Granting new trial for insufficiency of evidence not inconsistent with refusal to reduce verdict, *Faben v. Muir* 59 W. 250.

New trial granted for erroneous instruc-

tions not excepted to, *Moore v. Marsh* 59 W. 151.

Two juries found for plaintiff, new trial for insufficiency of evidence properly denied, *Morey v. S., R. & S. R. Co.* 59 W. 120.

Evidence going to credibility of witness is not ground, *Harvey v. Ivory* 35 W. 397.

Conversation not relating to case between juror and deputy sheriff is not misconduct, *State v. Smokalem* 37 W. 91.

Grant of new trial when conflict in testimony is discretionary, *Colvin v. Northern Pacific R. Co.* 42 W. 5.

If new trial sustainable on any grounds it will not be reversed, *Dennis v. Montezano National Bank* 38 W. 435.

If evidence in control of party moving as entries in his books but not ready and available is not ground for new trial, *Collins v. Bacon* 38 W. 80.

If witness known to be present at time of accident and no continuance asked the evidence is not newly discovered, *Dumontier v. Stetson & Post Mill Co.* 39 W. 264.

New trial granted for valid instruction will be reversed by supreme court, *Tham v. Steeb Shipping Co.* 39 W. 271.

New trial granted to overcome preponderance with newly discovered evidence, *Brennan v. Seattle* 39 W. 640.

New trial asked for on ground of fraud and refused will not be disturbed without showing of abuse of discretion, *Callahan v. Washington W. P. Co.* 27 W. 154.

If trial court erroneously grants motion for new trial expressly on question of law and several grounds are predicated on facts, the case will be reversed without considering the grounds of fact, *Gray v. Washington W. P. Co.* 27 W. 713.

Where there is conflict in evidence new trial is properly refused, *O'Rourke v. Jones* 22 W. 629.

Jury striking average if not bound is not misconduct, *Watson v. Reed* 15 W. 440; *Stanley v. Stanley* 32 W. 489.

New trial is in discretion of the court and will be disturbed only when grossly abused—if several grounds not specified and any sustains court, ruling will not be disturbed, *Rotting v. Cleman* 12 W. 615.

Granting of new trial is in discretion of the court, *Rinehart v. Watson* 11 W. 526; *Holgate v. Parker* 18 W. 207.

In new trial because complaint does not state a cause terms can not be imposed, *Casey v. Malidore* 19 W. 279.

Court may overrule defendants motion on condition that plaintiff will remit, *Winter v. Shoudy* 9 W. 52.

Change in rule by Supreme Court party entitled to new trial on ground of surprise, *Allen v. Chambers* 18 W. 341.

Granting of new trial with assertion that the court would render same judgment when there are no new elements in the case is error, *Sharp v. Greene* 22 W. 677.

If verdict not in accordance with theory of either plaintiff or defendant new trial will be granted, *Tilden v. Gordon & Co.* 25 W. 593.

Successor of judge may correct erroneous orders of cause not determined, *Shepherd v. Gove* 26 W. 452.

Grant of new trial on refusal of plaintiff to remit part of verdict when evidence conflicting, sustained, *Hughes v. Dexter Horton & Co.* 26 W. 110.



One juror will not be heard to impeach verdict, *Marvin v. Yates* 26 W. 51.

Where question is one of law Supreme Court will not be controlled by judgment of trial court, *Gardner v. Lovegren* 27 W. 356.

New trial granted on substantially same ground as continuance was asked was not disturbed, *Bracka v. Fish* 28 W. 410.

Attorneys had information of residence of witness but mislaid it, court granted new trial but was reversed, *Reeder v. Traders Natl. Bank* 28 W. 139.

Absence of letter of plaintiff explained at trial wherein he stated he would rely on lien will entitle defendant to new trial when he has been charged personally, *Lafond v. Smith* 8 W. 26.

Court properly granted new trial when remission of verdict refused, *Rigney v. Tacoma L. & W. Co.* 9 W. 245.

New trial was properly refused when allowance was made by requiring remission of verdict, *Tyler v. North Am. T. & T. Co.* 24 W. 252.

Action of court will not be disturbed if there is any theory sustaining it, *Trumbull v. Jackman* 9 W. 524.

When there is conflict in testimony action of Superior Court will not be disturbed, *Friedman v. Manley* 21 W. 43.

New trial granted will not be reversed except for abuse of discretion, *Langston v. Epralm* 21 W. 282.

Drunkenness of juror is misconduct, *Hedican v. Pennsylvania Fire Ins. Co.* 21 W. 488.

Motion for new trial not condition precedent to appeal, *Carter v. Seattle* 21 W. 585.

New trial granted when there is substantial conflict in testimony sustained, *Latimer v. Black* 24 W. 231.

New trial on question of law is not discretionary and will be reversed, *Dunkle v. Spokane Falls & N. Ry.* 20 W. 254.

New trial granted as to one defendant is granted as to all though they do not apply, *State ex rel Holgate v. Superior*

Court 19 W. 114.

Grant of new trial without notice and vacation of judgment and entry for less sum is error, *Gifford v. Maxwell* 19 W. 614.

New trial granted will not be disturbed on appeal if there is conflict in the evidence, *McBroom & Wilson Co. v. Gandy* 18 W. 79.

New trial refused because evidence did not support verdict will not be reviewed in the absence of the evidence, *Pincus v. Puget Sound Brg. Co.* 18 W. 108.

New trial should be granted when record could not be found though plaintiff waited until ten minutes before testimony was required before making demand of custodian of records, *Pincus v. Puget Sound Brg. Co.* 18 W. 108.

Court can not entertain second motion on same grounds—party filing motion is not entitled to notice of hearing, *Barnum v. Spokane Mercantile Co.* 18 W. 207.

Order granting new trial will not be reviewed if there is no statement and evidence, *Linder v. Newman* 18 W. 481.

Where trial judge is not satisfied with verdict he should set it aside, *Tacoma v. Tacoma L. & W. Co.* 16 W. 288.

Motion for new trial on statutory grounds does not save objection going to the form of the action, *Sweeney v. Pacific Coast Elevator Co.* 14 W. 562.

324; *Somerville v. Johnson* 3 W. 140.

Where defect of parties is not raised by answer or demurrer court can dismiss only on refusal of plaintiff to bring in necessary parties, *Harrington v. Miller* 4 W. 808.

Nonsuit should not be entered by the court of its own motion, *McDaniel v. Press-*

Juror talked with plaintiff but not about the case held not misconduct, *Vowell v. Issaquah Coal Co.* 31 W. 103.

New trial for newly discovered evidence properly denied where party had failed to obtain addresses of witnesses when names were obtained, *Bullock v. White Star Stm'p Co.* 30 W. 448.

Cited 75 W. 430.

**§8226. When Small Damages No Cause for New Trial. §277.—277.** A new trial shall not be granted on account of the smallness of damages in an action for an injury to the person or reputation, nor in any other action where the damages shall equal the actual pecuniary injury sustained.

Inadequate damages ground for new trial, *Jorgenson v. Crane* 92 W. 642.

**§8227. Motion and Affidavit. §278.—278.** The motion for a new trial shall state the grounds or causes for which a new trial is asked, and if made for any of the causes mentioned in the first, second, third or fourth subdivisions of section two hundred and seventy-six the facts upon which it is based may be shown by affidavit.

Facts not appearing of record must be shown by affidavit, *Maryland Casualty Co. v. Seattle Electric Co.* 75 W. 430.

Affiant in support of motion for new trial is "witness" in case under criminal statute, *State v. Dooley* 82 W. 483.

When the record is silent misconduct of jury by separating must be shown by affidavit, *Lybargar v. State* 2 W. 552.

Evidence sufficient to sustain verdict it will not be disturbed, *id.*

Motion may be amended—new trial is in discretion of court, *Krielsheimer v. Nelson* 31 W. 406.

If affidavits would fail to establish ground refusal to extend time is not error, *Bullock v. White Star Stm'p. Co.* 30 W. 448.

**Substitute—AN ACT relative to motions for a new trial in district courts and to repeal Section 281 of the Code of Washington relative thereto.**

Approved January 31, 1888. Laws '88 p 30.

**§8228. Motion May Be General. §1.** In no case of motion for a new trial hereafter made in the courts of this state shall it be necessary to specify the grounds thereof otherwise than in the language of section 276 of the

Code of 1881 [§8225], specifying the grounds upon which a motion for a new trial may be made.

**§8229. Time of Motion—Affidavits and Counter-affidavits.** §1. The party moving for a new trial must, within two days after the verdict of a jury, if the action was tried by a jury, or two days after notice in writing of the decision of the court or referee, if the action was tried without a jury, file with the clerk, and serve upon the adverse party his motion for a new trial, designating the grounds upon which it will be made. If the motion is made upon affidavits, the moving party must within two days after serving the motion, or such further time as the court in which the action is pending, or the judge thereof, may allow, file such affidavits with the clerk, and serve a copy thereof upon the adverse party, who shall have two days to file counter affidavits, or such further time as the court may allow, a copy of which must be served upon the moving party. L. '97 13.

Court has no jurisdiction after judgment entered nor after appeal, *State v. Duncan* 101 W. 542.

Premature motion not fatal, *Mann v. Am. Bonding Co.* 100 W. 258.

Motion for new trial two years after verdict cannot be considered, *Vermont Farm Machine Co. v. Lamka* 94 W. 622.

Time of entering judgment, §8081.

Three days' notice of hearing not necessary to moving party, *State Bank v. Spokane-Columbia River R. Co.* 53 W. 528.

Time runs from action complained of—time may be extended by the court, *O'Brien*

**§8230. Affidavits of New Evidence.** §282. If the motion be supported by affidavits, and the cause be newly discovered evidence, the affidavits of any witness or witnesses, showing what their testimony will be, shall be produced, or good reasons shown for their non-production. L. '91 102.

## NUISANCE.

Criminal nuisance §§9012, 9131-68.

Forest fires and slashings are nuisances—cost of abating a lien, etc. §2581.

Grade crossings, when §5653.

Prostitution, houses enjoined, tax, etc. §8235.

Water supply of city, abatement, etc. §1255.

**§8231. Nuisance Defined.** §605.—605. The obstruction of any highway or the closing of the channel of any stream used for boating or rafting logs, lumber or timber, or whatever is injurious to health or indecent or offensive to the senses, or an obstruction to the free use of property, so as to essentially interfere with the comfortable enjoyment of the life and property, is a nuisance, and the subject of an action for damages and other and further relief.

Nuisance and abatement—criminal nuisance, §§9012, 9131-68; removal from private property, §5364.

Securing room at hotel with female for immoral purposes actionable, *Hall v. Galway* 76 W. 42.

Laundry established for twenty years held not a nuisance—city has power to regulate, *Crawford v. Central Steam Laundry* 78 W. 355.

Private damage by obstructions recoverable under the statute or common law, *Sholin v. Skamania Boom Co.* 56 W. 303.

Obstruction to road used by farmer to go to farm may be enjoined, *Ingalls v.*

*Eastman* 61 W. 239.

Undertaking establishment in residence district a nuisance, *Densmore v. Evergreen Camp W. O. W.* 61 W. 230.

Original proceeding by injunction may be had if this procedure inadequate, *Carl v. West Aberdeen etc. Co.* 13 W. 616.

The maintenance of a saloon is not a nuisance to a private corporation though its employees resort to it and get drunk—since corporation has not natural life nuisance can only be injurious to its property, *Northern Pac. R. R. v. Whalen* 149 U. S. 157.

**§8232. Action to Abate—Warrant.** §606. Such action may be brought by any person whose property is injuriously affected or whose personal enjoyment is lessened by the nuisance. If judgment be given for the plaintiff in such action, he may, in addition to the execution to enforce the same, on motion, have an order allowing a warrant to issue to the sheriff to abate such nuisance. Such motion shall be allowed of course, unless it appear on the hearing that the nuisance has ceased, or that such remedy is inadequate to abate or prevent the continuance of the nuisance, in which latter case the plaintiff may have the defendant enjoined. L. '91 89.



City may abate nuisance by bill in equity, *Moore v. Walla Walla*, 2 W. T. 184.

Resort to a judicial tribunal should precede destruction of property—unauthorized railway tracks, *Spokane St. Ry. v. Spokane Falls*, 6 W. 521.

Public nuisance abated only by public officer, *Griffith v. Holman* 23 W. 347; *Jones*

*v. St. Paul, etc., Ry.*, 16 W. 25.

Cannot abate possible future nuisance, *Winsor v. Hanson*, 40 W. 423.

Improperly maintained fish market may be nuisance, *Asia v. Pool*, 47 W. 515.

Stamp-mill in hotel may be abated by landlord, *Ridpath v. Spokane Stamp Wks.* 48 W. 320.

Cited 76 W. 42.

**§8233. Warrant May Issue Within Six Months.** §607.—607. If the order be made, the clerk shall thereafter at any time within six months, when requested by the plaintiff issue such warrant directed to the sheriff, requiring him forthwith to abate the nuisance at the expense of the defendant, and return the warrant as soon thereafter as may be, with his proceedings endorsed thereon. The expenses of abating the nuisance may be levied by the sheriff on the property of the defendant and in this respect the warrant is to be deemed an execution against property.

**§8234. Stay Bond—Warrant Reissued When.** §608.—608. At any time before the order is made or the warrant issues, the defendant may, on motion to the court or judge thereof, have an order to stay the issue of such warrant, for such period as may be necessary, not exceeding six months, to allow the defendant to abate the nuisance himself upon his giving bond to the plaintiff in a sufficient amount, with one or more sureties to the satisfaction of the court or judge thereof, that he will abate it within the time and in the manner specified in such order. The sureties shall justify as bail upon arrest. If the defendant fails to abate such nuisance within the time specified, the warrant for the abatement of the nuisance may issue as if the same had not been stayed.

**AN ACT** relating to houses or places of lewdness, assignation and prostitution, to declare the same to be nuisances, to enjoin the person or persons who conduct or maintain the same, and the owner or agent of any building or property used for such purposes, and to assess a tax against the person or persons maintaining said nuisance and against the building or property and owner and agent thereof. Approved March 19, 1913. Laws '13, ch. 127.

**§8235. House, Etc., of Prostitution a Nuisance.** §1. Whoever shall erect, establish, maintain, continue, use, own or lease any building or place used for the purpose of lewdness, assignation or prostitution is guilty of a nuisance, and the building or place, or the ground itself, in or upon which lewdness, assignation or prostitution is conducted, permitted or carried on, continued or exists, and the furniture, fixtures, musical instruments, and contents are also declared a nuisance, and shall be enjoined and abated as hereinafter provided.

Abandonment in good faith not shown—

bond does not relieve property of \$300 tax

—equality of taxation—due process of law

—closing building and selling contents,

*State ex rel. Kern v. Jerome* 80 W. 261.

Owner's knowledge immaterial—no jury

in action to abate, *State ex rel. Dow v. Nichols* 83 W. 676.

Act invalid as to owner not in possession and without notice, *State ex rel. Kern v. Emerson*, 90 W. 565.

Affirmed, *State ex rel. Lundin v. Campbell* 95 W. 701.

**§8236. Action—Injunction—Notice.** §2. Whenever a nuisance exists, as defined in this act, the prosecuting attorney or any citizen of the county may maintain an action in equity in the name of the State of Washington upon the relation of such prosecuting attorney or citizen, to perpetually enjoin said nuisance, the person or persons conducting or maintaining the same, and the owner or the agent of the building or ground upon which said nuisance exists. In such action, the court or judge may upon the presentation of a petition therefor alleging that the nuisance complained of exists, allow a temporary injunction if it shall be made to appear to the satisfaction of the court or judge that such nuisance exists. At least three days' notice in writing shall be given the defendant of the hearing of the application. Any violation of the provisions of injunction herein provided shall be a contempt as hereinafter provided.

*Lundin v. Humphrey* 94 W. 599.

Temporary cessation of unlawful practices will not defeat action, *State ex rel.*

Title of complaint defective cured by recitals, *State v. Knutson* 81 W. 47.

**§8237. Evidence—Dismissal—Continuance—Costs.** §3. In such action evidence of the general reputation of the place shall be admissible for the purpose of proving the existence of said nuisance. If the complaint is filed by a citizen, it shall not be dismissed except upon a sworn statement made by the complainant and his attorney, setting forth the reasons why the action should be dismissed, and the dismissal approved by the prosecuting attorney in writing or in open court. If the court is of the opinion that the action ought not to be dismissed, he may direct the prosecuting attorney to prosecute such action to judgment, and if the action is continued more than once, upon the application of either party, any citizen of the county or the prosecuting attorney may be substituted for the complaining party and prosecute said action to judgment. If the action is brought by a citizen and the court finds there was no reasonable ground or cause for said action, the costs may be taxed to such citizen who originally brought such action.

**§8238. Contempt—Punishment.** §4. In case of the violation of any injunction granted under the provisions of this act, the court or judge may summarily try and punish the offender. The proceedings shall be commenced by filing with the clerk of the court an information under oath, setting out the alleged facts constituting such violation, upon which the court or judge shall cause an attachment to issue, under which the defendant shall be arrested. The trial may be had upon affidavit, or either party may demand the production and oral examination of the witnesses. A party found guilty of contempt under the provisions of this section shall be punished by a fine of not less than two hundred nor more than one thousand dollars, or by imprisonment in the county jail not less than three nor more than six months, or by both fine and imprisonment.

*Injunction in recess—binds the world—lis pendens not necessary, State v. Terry 99 W. 1.*

**§8239. Abatement—Costs.** §5. If the existence of the nuisance be established in an action as provided in this act, or in a criminal proceeding, an order of abatement shall be entered as a part of the judgment in the case, which order shall direct the removal from the building or place of all fixtures, furniture, musical instruments or movable property used in conducting the nuisance, and may direct the sale thereof in the manner provided for the sale of chattels under execution and effectual closing of the building or place against its use for any purpose, and so keeping it closed for a period not exceeding six months. If any person shall break and enter or use a building or place so directed to be closed, he shall be punished as for contempt as provided in the preceding section. For removing and selling all movable property, the officer shall be entitled to charge and receive the same fees as he would for levying upon and selling like property on execution, and for closing the premises and keeping them closed, a reasonable sum shall be allowed by the court.

*Conditional sales valid in abatement levies, Simon Plano Co. v. Fairfield 103 W. 206.*

**§8240. Proceeds of Property Sold, Disposed of.** §6. The proceeds of the sale of the personal property, as provided in the preceding section, shall be applied in payment of the costs of the action and abatement, and the balance, if any, shall be paid to the person owning such property prior to said sale.

**§8241. Suspension of Judgment—Lien.** §7. If the owner appears and pays all costs of the proceedings, and files a bond with sureties to be approved by the clerk in the full value of the property, to be ascertained by the court conditioned that he will immediately abate said nuisance and prevent the same from being established or kept therein within a period of one year thereafter, the court or judge may, if satisfied of his good faith order the premises closed under the order of abatement to be delivered to said owner, and said order of abatement cancelled so far as same may relate to said property, and if the proceeding be an action in equity and said bond be given and costs therein paid before judgment and order of abatement, the action shall be thereby abated as to said building only. The release of the property under the provisions of this action shall not release it from any judgment, lien, penalty or liability to which it may be subject by law.



**§8242. Fine of Property, Tax to Pay.** §8. Whenever a permanent injunction issues against any person for maintaining a nuisance as herein defined, or against any owner or agent of the building kept or used for the purposes prohibited by this act, there shall be assessed against said building and the ground upon which the same is located and against the person or persons maintaining said nuisance, and the owner or agent of said premises, a tax of three hundred dollars. The assessment of said tax shall be made by the county assessor of the county in which the nuisance exists and shall be made within three months from the date of the granting of the permanent injunction. In case the assessor fails or neglects to make said assessment the same shall be made by the sheriff of the county, and a return of said assessment shall be made to the county treasurer. Said tax may be enforced and collected in the manner prescribed for the collection of taxes under the general revenue laws and shall be a perpetual lien upon the real property, and personal property not already sold as provided by this act, used for the purpose of maintaining said nuisance, and the payment of said tax shall not relieve the person or building from any penalties provided by law, and when collected shall go into the county general fund.

### OFFICIAL BONDS, ETC.

Fines, all paid into state current school Public service law, violations §5625. fund §5109.

**§8243. Official Bond Is Security to Everybody.** §652.—652. The official bond of a public officer to the state, or to any county, city, town or other municipal or public corporation of like character therein, shall be deemed a security to the state or to such county city town or other municipal or public corporation, as the case may be, and also to all persons severally, for the official delinquencies against which it is intended to provide.

No bond shall fail for want of form or substance, §§ 7431, 511, 9350, 9959.

Findings held to warrant judgment on bond of county treasurer—commissioners power to settle, *Ferry v. King County* 2 W. 337.

Sureties on bond of chief of police are not liable for unlawful arrests of police officers, *Marquis v. Willard* 12 W. 528.

May bring action on bond of treasurer of board of regents of state college for failure to turn over funds to successor, *State v. Smith*, 9 W. 195.

Creditors of bonded city official cannot garnishee city funds in his hands, *Marx v. Parker*, 9 W. 473.

Sureties not liable on term of office extended beyond legal time—alteration—defects—construction, *King Co. v. Ferry* 5 W. 536.

Official bond with blank penalty is nullity—filling in after execution voidable, *Walla Walla v. Ping*, 1 W. T. 339.

Failure to produce bond before trial not fatal if excused, *Spears v. Lawrence*, 10 W. 368.

**§8244. Injured Party May Bring Action.** §653.—653. When a public officer by official misconduct or neglect of duty, shall forfeit his official bond or render his sureties therein liable upon such bond, any person injured by such misconduct or neglect or who is by law entitled to the benefit of the security may maintain an action at law thereon in his own name against the officer and his sureties to recover the amount to which he may by reason thereof be entitled.

Judgment against sheriff for wrongful levy not conclusive against sureties, *Larson v. Deering* 97 W. 616.

**§8245. Leave of Court to Sue.** §654.—654. Before an action can be commenced by a plaintiff, other than the state, or the municipal or public corporation named in the bond, leave shall be obtained of the court or judge thereof where the action is triable. Such leave shall be granted upon the production of a certified copy of the bond and an affidavit of the plaintiff, or some person in his behalf, showing the delinquency. But if the matter set forth in his affidavit be such that, if true, the party applying would clearly not be entitled to recover in the action, the leave shall not be granted. If it does not appear from the complaint that the leave herein provided for has been granted, the defendant, on motion, shall be entitled to judgment of non-suit; if it does, the defendant may controvert the allegation, and if the issue be found in his favor, judgment shall be given accordingly.

Nonsuit for failure to obtain leave, *Hunter v. Berridge* 103 W. 536.

Leave not necessary in action by penitentiary trustees in their official capacity

—In other cases timely objection must be made, *Nye v. Kelly* 19 W. 73.

Leave not necessary to sue administrator, *Bartels v. Gove* 4 W. 632.

**§8246. Successive Recoveries.** §655.—655. A judgment in favor of a party for one delinquency shall not preclude the same or another party from maintaining another action on the same bond for another delinquency.

Any person may sue, §510.

**§8247. Recovery Against Sureties Limited to Penalty.** §656.—656. In an action upon an official bond, if judgments have been recovered against the surety therein other than by confession, equal in the aggregate to the penalty or any part thereof of such bond, and if such recovery be established on the trial, judgment shall not be given against such surety for an amount exceeding such penalty, or such portion thereof as is not already recovered against him.

**§8248. Recovery of Fines and Forfeitures.** §657.—657. Fines and forfeitures may be recovered by an action at law in the name of the officer or person to whom they are by law given, or in the name of the officer or person who by law is authorized to prosecute for them.

**§8249. Maximum Penalty Prescribed, Judgment for Any Amount.** §658.—658. When an action shall be commenced for a penalty, which by law is not to exceed a certain amount, the action may be commenced for that amount, and if judgment be given for the plaintiff, it may be for such amount or less, in the discretion of the court, in proportion to the offense.

**§8250. Judgment for Penalty by Collusion Is Not Bar.** §659.—659. A recovery of a judgment for a penalty or forfeiture by collusion between the plaintiff and defendant, with intent to save the defendant wholly or partially from the consequences contemplated by law, in case when the penalty or forfeiture is given wholly or partly to the person who prosecutes, shall not bar the recovery of the same by another person.

**§8251. Unappropriated Fines Go to School Fund—Venue.** §660.—660. Fines and forfeitures not specially granted or otherwise appropriated by law, when recovered, shall be paid into the school fund of the proper county. Whenever by the provisions of law any property real or personal shall be forfeited to the state or to any officer for its use, the action for the recovery of such property may be commenced in any county where the defendant may be found or where such property may be.

## PARTIES TO ACTIONS.

Action against finder of lost money, etc.

§3668.

Common law supplements criminal code

§8734.

Interpleader §8282.

Intervention §8280.

Intoxicating liquors, damage by sale

§§3196-2, 9875.

Militia, members, defense of actions against  
—cost bonds §3765-18.

Roads, violation of travel regulations  
§6203.

State, actions against §6260.

**§8252. Common Law Supplements Statutes.** §1. The common law, so far as it is not inconsistent with the constitution and laws of the United States, or of the State of Washington, nor incompatible with the institutions and condition of society in this state, shall be the rule of decision in all the courts of this state. L. '91 31.

Lienor prior to state's claim for premiums under industrial insurance, *Mississippi Valley Tr. Co. v. Oregon-W. Timber Co.* 213 Fed. 988.

Title to beds of unnavigable lakes is not in the state, but in riparian owners—irrigation, *Bernot v. Morrison* 81 W. 538.

Common law rule that punitive damages are not allowed obtains in the absence of statute—telegraph company liable only for price of the message in case of negligence in delivery of message to father of impending death of his child, *Corcoran v. Postal Telegraph-Cable Co.* 90 W. 570.

Is common law relating to arrest of absconding debtors in force? *Hamilton v. Pacific Drug Co.* 78 W. 689.

Title of act sufficient under organic act. *Naden v. Christopher*, 62 W. 413.

Customs etc. mining districts govern.  
§7996.

Common law supplements Criminal Code, §8734.

Law merchant supplements negotiable instruments act, §4267.

The common law as adopted in 1863 is in force except as modified by statute, *Richards v. Redelsheimer* 36 W. 325.

Common law of England is that body of principles evolved by the English courts out of the promptings of reason and common sense, and in like manner the courts of this state apply those principles, *Sayward v. Carlson* 1 W. 40; *Lane v. S. F. & S. Ry.* 21 W. 119.

The English Statute of Frauds is in force in this State, *Wagner v. Law* 3 W. 502; *Bates v. Drake* 28 W. 447; *State v. Williams* 18 W. 47.



A lower estate is not servient to an estate above to receive the flow of water coming from the upper estate, following the rule of the common law, *Cass v. Dicks* 14 W. 75; but see *Noyes v. Cosselman* 29 W. 635.

A riparian owner is entitled to the natural flow of a stream across his land, *Benton v. Johncox* 17 W. 281.

The law of contempts in this state is a statute declaratory of the common law,

**§8253. Only One Form of Action.** hereafter, but one form of action for the rights and the redress of private wrongs, which shall be called a civil action.

Equity will apply statute of limitations as a court of law, *Hotchkiss v. McNaught-Collins Imp. Co.* 102 W. 161.

Damage for false representations, relief from notes and injunction against their transfer may be joined, *Forrester v. Jastad* 97 W. 622.

Remedies not abolished—creditor of insolvent corporation, after receivership had them closed, maintained an action for its own benefit against stockholder on unpaid stock subscription—other creditors had no right in proceeds, *Montesano v. Carr* 80 W. 384.

Causes united, §8380; pleadings, §8342.

Distinction between law and equity exists *Barto v. Seattle R. Co.* 28 W. 179; *Overlock v. Shinn*, id, 205.

Distinction between code and common law pleading, *Newburg v. Farmer* 1 W. T. 182; *Renton v. St. Louis* 1 W. T. 215; *Puget Sound I. Co. v. Worthington* 2 W. T. 472; *Distler v. Dabney* 3 W. 200.

Where pleadings invoke equity, error to try action at law, *Distler v. Dabney*, 7 W. 431.

The name given to an action is immaterial, *Watson v. Glover* 21 W. 677; *Dormitzer v. American Sav. Soc.*, 23 W. 132; *Dunlap v. Rauch* 24 W. 620.

If complaint states facts warranting any relief it is good though there may be wanting facts for the evident purpose of the complaint, *Brown v. Baldwin* 46 W. 106.

Action maintainable for both legal and equitable relief, *Durga v. Lincoln Creek Lum. Co.* 47 W. 477; *Surber v. Kittenger*

**§8254. Parties Are Plaintiff and Defendant.** §3.—3. The party commencing the action shall be known as the plaintiff, and the opposite party the defendant.

Procedure name of defendant not known

**§8255. Action by Real Party in Interest.** §4.—4. Every action shall be prosecuted in the name of the real party in interest, except, as is otherwise provided by law.

Necessary parties, §8270; assignees, §8272; joinder of parties, §8273.

Vendee in possession with conditional contract of sale is real party in interest, *Stotts v. Puget Sound T. L. & P. Co.* 94 W. 339.

Party insured may sue wrongdoer, *Alaska Pacific S. S. Co. v. Sperry Flour Co.* 94 W. 227.

Necessary party appearing irregularly is good appearance, *Robbins v. Wyman, Partidge & Co.* 75 W. 617.

Objection to defect of parties plaintiff must be timely or is waived, *Harris v.*

*State v. Tugwell* 19 W. 252.

The title to the beds of non-navigable streams is in the riparian owner, *Griffith v. Holman* 23 W. 355.

"Laws of the United States" and "Laws of the Territory" defined, *Phelps v. Steamship City of Panama* 1 W. T. 519.

The statute relating to ejectment in this State is declaratory of the common law, *Smith v. Wingard* 3 W. T. 291.

§2.—2. There shall be in this state enforcement or protection of private rights and the redress of private wrongs, which shall be called a civil action. 6 W. 240; *Dickerson v. Spokane* 26 W. 292; *Young v. Stampfer* 27 W. 350; *Goupille v. Chaput* 43 W. 702.

There being but one form of action in this State, a receiver may be appointed when the remedy requires it. The test of whether an action is at law or in equity is the relief sought, *Washington Iron Works Co. v. Jensen* 3 W. 584.

In every case the rules of law and equity are applied indiscriminately, and a case once tried becomes *res judicata* as to both law and equity, *Bruce v. Foley* 18 W. 96.

In an action on an insurance policy, where a release is pleaded as a defense, the plaintiff may show that the release was procured by fraud, and institute his action without returning the money paid for the release, *Sanford v. Royal Ins. Co.* 11 W. 653.

Distinction between law and equity formerly obtained (Laws '71 p 3 §1), but the present rule was restored by Laws '73 p 3 §1, *Garrison v. Cheeney* 1 W. T. 489.

The remedies of law and equity have not been changed, but the facts constituting causes of action may be united, *Thompson v. Caton* 3 W. T. 31.

"Civil action" in act '69 included actions at law and suits in equity. *Garrison v. Cheeney* 1 W. T. 489. Common law forms were abolished by act '71 id.

Action for damages for wrongful eviction under lease invalid for want of acknowledgment can be sustained, *Browder v. Phinney* 30 W. 74.

§3.—3. The party commencing the action shall be known as the plaintiff, and the opposite party the defendant. §8339.

Persons not made parties are not bound, *Madison v. Madison* 1 W. T. 60.

**§8255. Action by Real Party in Interest.** §4.—4. Every action shall be prosecuted in the name of the real party in interest, except, as is otherwise provided by law.

Necessary parties, §8270; assignees, §8272; joinder of parties, §8273.

Vendee in possession with conditional contract of sale is real party in interest, *Stotts v. Puget Sound T. L. & P. Co.* 94 W. 339.

Party insured may sue wrongdoer, *Alaska Pacific S. S. Co. v. Sperry Flour Co.* 94 W. 227.

Necessary party appearing irregularly is good appearance, *Robbins v. Wyman, Partidge & Co.* 75 W. 617.

Objection to defect of parties plaintiff must be timely or is waived, *Harris v.*

*Johnson* 75 W. 291.

Taxpayer may enjoin illegal expenditure of public funds by city to the damage of the public, *Maxwell v. Smith* 87 W. 629.

Broker who deposited client's money in his own name, as agent, and delivered his checks thereon as agent, may sue in his own name for the amount of such checks, *Goodfellow v. First Nat. Bank*, 71 W.

Taxpayer is proper party to enjoin unlawful expenditure of money, *Dirks v. Col-lin* 37 W. 620.

In mandamus real party at interest should join the State as a party, *State ex*

rel. Weinberg v. Pacific B. & M. Co. 21 W. 451.

Holder of a lease with term beginning after the term of a tenant in possession is the real party in interest in an action against the tenant in possession, Capitol Brewing Co. v. Crosbie 22 W. 269.

In an action on a bond for the security of laborers and materialmen, given to the United States, the United States is a proper party plaintiff in an action in the courts of this State, United States v. Rundle 27 W. 7.

Under the revenue law a bank is the proper party plaintiff in an action for re-

lief against excessive taxation of its capital stock, Citizens' Bank v. Columbia County 23 W. 441.

Creditor is proper plaintiff to set aside debtor's fraudulent conveyance, Fidelity Nat. Bank v. Adams 38 W. 70.

Indorsee of note proper plaintiff, Yakima Bank v. Knipe 6 W. 348; Seattle Bank v. Emmons 16 W. 585; Lodge v. Lewis 32 W. 191; State v. Headlee 18 W. 220; Capital Brg. Co. v. Crosbie 22 W. 270; Little v. Saulsberry, 40 W. 550.

Indians may sue, 1 W. T. 325.

Cited 85 W. 175.

Cited 86 W. 399.

**§8256. Fiduciaries May Sue. §5.—5.** An executor or administrator, or guardian of a minor or person of unsound mind, a trustee of an express trust, or a person authorized by statute, may sue without joining the person for whose benefit the suit is prosecuted. A trustee of an express trust, within the meaning of this section, shall be construed to include a person with whom or in whose name a contract is made for the benefit of another.

Guardian ad litem, §8269; costs, §7469.

Actions by and against executors etc. §§7827, 9885.

Owner of building cannot sue surety company on contractor's bond for non-lien claimants, Rust v. United States F. & G. Co. 87 W. 93.

Contract held not to be express trust, Vashon Fruit Union v. Godwin & Co. 87 W. 384.

Casualty company had automobile repaired, not paying bill, held owner could not recover from party doing damage, Broderick v. Puget Sound Tr. L. & P. Co. 86 W. 399.

Beneficiary of estate authorized by foreign executor to purchase property is trustee of an express trust, Doe v. Tenino Coal & I. Co. 43 W. 523.

Mechanic's lien may be enforced against guardian, Merz v. Mehner 57 W. 324.

Grantee of realty without consideration is within section, Carr v. Cohen 44 W. 586.

Under our revenue law a bank is the trustee of the shareholders, Ladd v. Gilson 26 W. 79; Citizens Bank v. Columbia County 23 W. 441.

Defect of parties waived unless raised, Baxter v. Scoland, 2 W. T. 86; Budlong v. Budlong 48 W. 645.

United States proper plaintiff on bond under federal law, U. S. v. Rundle 27 W. 7.

When consignor not proper plaintiff against carrier, Sweeney v. Waterhouse & Co. 39 W. 507.

Trustee of express trust may be sued without joining beneficiary, Thompson v. Price 37 W. 394.

**§8257. When Husband and Wife Must Be Joined. §6.—6.** When a married woman is a party, her husband must be joined with her, except

1. When the action concerns her separate property, or her right or claim to the homestead property, she may sue alone.

2. When the action is between herself and her husband, she may sue or be sued alone.

3. When she is living separate and apart from her husband, she may sue or be sued alone.

Community rights, §1420.

Admitting plaintiff's ownership precludes objection that wife not made a party, Chute v. Attalia Land Co. 91 W. 4.

Judgment against wife is not lien on community property, Conley v. Greene 89 W. 39.

Wife alone cannot make contract with attorney to prosecute action for her personal injury, Hammond v. Jackson 89 W. 510.

Husband, after divorce without dividing property, is necessary party to action by wife for indecent assault, Schneider v. Biberger 76 W. 504.

In the absence of the husband wife incurred expenses and conveyed community property as security. In action for reconveyance, husband is a necessary party, Rodda v. Needham 78 W. 636.

Stepfather must join in action respecting children, Magnuson v. O'Dea 75 W. 574.

Wife living separate from husband may

maintain action for personal injuries, Horton v. Seattle 53 W. 316.

Wife a necessary party in foreclosure of local assessment lien on community property, McNair v. Ingebrightsen 36 W. 186.

If wife's earnings are not her separate property husband must be joined, Sherlock v. Denny 28 W. 170.

Wife alone may maintain action to protect homestead in community, Ross v. Howard 25 W. 1.

Wife is necessary party in mortgage foreclosure though property in name of husband, Dane v. Daniel 23 W. 378, 28 W. 155.

In an action for damages for wrongful taking of community realty the wife is a necessary party plaintiff, Parke v. Seattle 8 W. 78; or in recovery of rents and profits, Lownsdale v. Grays Harbor Boom Co. 21 W. 542.

Wife is a necessary party defendant in foreclosure of mechanics' and other liens, Littell & Smythe Mfg. Co. v. Miller 3 W. 480; Seattle v. Baxter 20 W. 714; Powell v. Nolan 27 W. 318; Peterson v. Dillon 27



W. 78; in action for rents and profits, Lownsdale v. Grays Harbor Boom Co. 21 W. 542.

Wife is necessary party in condemnation proceedings, Chehalis County v. Ellingson 21 W. 638.

Wife is necessary party defendant in specific performance of land contract, Armstrong v. Oakland 23 W. 122.

**§8258. When Husband and Wife May Be Joined. §7.—7.** Husband and wife may join in all causes of action arising from injuries to the person or character of either or both of them, or from injuries to the property of either or both of them, or arising out of any contract in favor of either or both of them. If a husband and wife be sued together, the wife may defend for her own right, and if the husband neglect to defend she may defend for his right also. And she may defend in all cases in which she is interested, whether she is sued with her husband or not.

Wife proper party defendant in action for assault by husband respecting community property, Geissler v. Geissler 96 W. 150.

Wife may foreclose mortgage for benefit of community, Nance v. Woods 79 W. 188.

Judgment in replevin against husband for failure to answer interrogatories does not bind the wife who had answered, Glass v. Buttner 39 W. 296.

An action for injury to the wife by the negligence of another must be brought by the husband, the wife is a proper but not a necessary party, Hawkins v. Front Street Cable Ry. Co. 3 W. 592.

**AN ACT** granting a right to recover damages for the death of a person caused by the wrongful act, neglect or default of another, and repealing section 183 of Remington & Ballinger's Annotated Codes and Statutes of Washington. Approved March 14, 1917. Laws '17 p 495.

**§8259. Right of Action for Wrongful Death. §1.** When the death of a person is caused by the wrongful act, neglect or default of another his personal representative may maintain an action for damages against the person causing the death; and although the death shall have been caused under such circumstances as amount, in law, to a felony.

Children cannot recover for death of mother, Whittlesey v. Seattle 94 W. 645.

Is superseded by industrial insurance act, Northern Pac. R. Co. v. Meese 239 U. S. 614, reversing Meese v. Northern Pac. R. Co. 211 Fed. 254.

Recovery limited to pecuniary loss, Pennoza v. Northern Pac. R. Co. 215 Fed. 200.

Action for death and personal injury separate, Frešcoln v. Puget Sound Tr. L. & P. Co. 225 Fed. 441.

Release by injured bars action by beneficiaries, Brodie v. Washington W. P. Co. 92 W. 574.

Applies to any wrongful killing—wrongful or justifiable is for jury—burden of proof, Welch v. Creech 88 W. 429.

Fireman's death election must be made by beneficiaries between above action and pension fund—children not under pension law have action, Longfellow v. Seattle 76 W. 509.

Above section did not repeal §8264, Mesher v. Osborne 75 W. 439.

Does not limit the right of action to minor heirs, Rochester v. Seattle, R. & S. R. Co., 67 W. 545.

Claim against city for injury to wife may be verified by either spouse, James v. Seattle. 68 W. 359.

Separate actions brought by children for their father's death are properly con-

Wife cannot be made party defendant in action on promissory note by husband though alleged to be community debt, Commercial Bank v. Scott 6 W. 499, overruled, McDonald v. Craig 10 W. 239.

Wife may be bound though not a party to all of the actions as in consolidated mechanics' lien actions, Douthitt v. McCulsky 11 W. 601.

In an action on a fire insurance policy the wife is a proper party plaintiff with the husband, Hedican v. Pennsylvania Fire Ins. Co. 21 W. 489.

Authorizes action by husband and wife for injuries to husband, Apker v. Hoquiam 51 W. 567.

Husband not necessary party in action by wife against agent for damages respecting her separate property, Harvey v. Sparks Bros. 45 W. 578.

May join in suit for improper burial of child's body, Wright v. Beardsley 46 W. 16.

Consolidated, Benson v. English Lumber Co. 71 W. 616.

In action by administrator for benefit of widow there must be competent evidence that the widow authorized the action, Kolloff v. C. M. & P. S. Ry. 71 W. 543.

There can be no recovery by parents for the death of a minor son, where there is no dependence, absolute or partial, although they were receiving his wages, Kanton v. Kelly, 65 W. 614.

Action survives the death of the injured person only as against the wrongdoer, and not against his personal representatives, Rinker v. Hurd, 69 W. 257.

Damage by sale of liquors, §§3196-2, 9875; for death, §8275.

Widow and children cannot maintain separate actions, Riggs v. N. P. R. Co. 60 W. 292.

Boy ran away to join army is not manumission—boy's letter admissible—burial expenses, Dean v. Oregon R. & N. Co. 44 W. 564.

Child of six years allowed to play in switch yard precludes recovery for death, Vinnette v. Nor. Pac. R. Co. 47 W. 320.

Nonresidents may maintain action—guardian not principal, Anustasakas v. International Const. Co. 51 W. 119.

Administratrix may bring action nam-

ing children in complaint—costs in nonsuit not to be paid before another action, Archibald v. Lincoln County 50 W. 55.

Action by minor, mother guardian ad litem, emancipates him and he may recover, Hammer v. Caine 47 W. 672.

Husband can recover for loss of time etc. for wrongful death of wife regardless of statute, Philby v. Nor. Pac. R. Co. 46 W. 173.

Defect of parties raised by special demurrer or answer, Buckles v. Reynolds 58 W. 485.

This section does not conflict with 81 §37, Swanson v. Pacific Shipping Co. 60 W. 87.

Evidence of physical condition of heir etc. not admissible in action for death, Seattle Elec. Co. v. Hartless 144 Fed. 381.

Non-resident aliens have right of action, Saveljich v. Lytle Logging etc. Co. 173 Fed. 277.

Husband has no action for death of wife, Johnson v. Seattle Electric Co. 39 W. 211.

Executor may maintain action for benefit of widow, Copeland v. Seattle 33 W. 415.

This section, being a later enactment, repeals Pierce's Code 1905 §1454, Dahl v. Tibbals 5 W. 259; 3 W. 194, 225.

The word "heirs" must be restricted to widow and children of deceased, Noble v. Seattle 19 W. 133; Manning v. Tacoma etc. Co. 34 W. 406.

Both the father and the administrator of a child's estate may maintain actions

**§8260. Beneficiaries.** §2. Every such action shall be for the benefit of the wife, husband, child or children of the person whose death shall have been so caused. If there be no wife or husband or child or children, such action may be maintained for the benefit of the parents, sisters or minor brothers, who may be dependent upon the deceased person for support, and who are resident within the United States at the time of his death. In every such action the jury may give such damage as, under all circumstances of the case, may to them seem just.

**§8261. Application of Terms.** §3. Words in this act denoting the singular shall be understood as belonging to a plurality of persons or things. The masculine shall apply also to the feminine, and the word person shall also apply to bodies politic and corporate.

**§8262. Repeal.** §4. Section 183 of Remington & Ballinger's Annotated Codes and Statutes of Washington shall be and is hereby repealed: Provided, however, That the grant, terms and conditions of said section 183 shall apply to all suits now pending, and all causes of action thereunder for wrongful death accruing within three years immediately prior to the taking effect of this act.

Supplemented by jitney act, Bruner v. Little 97 W. 319.

**§8263. Industrial Insurance Saved.** §5. This act shall not repeal or supersede [§3468] chapter 74 of the Laws of 1911 and acts amendatory thereof, or any part thereof.

**§8264. Action for Death of Child or Ward.** §9.—9. A father, or in case of the death or desertion of his family, the mother may maintain an action as plaintiff for the injury or death of a child, and a guardian for the injury or death of his ward.

Above section was not repealed by later act, §8275, Mesher v. Osborne 75 W. 439.

Electric company liable for uninsulated wire in tree children were accustomed to climb, Sweeten v. Pacific P. & L. Co. 88 W. 679.

Does not include an action under §8264, Kanton v. Kelly, 65 W. 614.

Wealth of parents does not prevent recovery of substantial damages, Atkeson v.

for child's death by wrongful act, Hedrick v. Ilwaco R. & N. Co. 4 W. 400.

The action under this section is for the damage sustained rather than for the neglect causing death, Klepsch v. Donald 4 W. 436.

Contributory negligence will defeat action for death by wrongful act, Brennan v. Front Street Cable Ry. Co. 8 W. 363.

What allowable as "pecuniary or exemplary damages," Walker v. McNeill 17 W. 593.

The right of action is limited to three years after the injury, Robinson v. Baltimore & S. M. & R. Co. 26 W. 484.

Pass exempting railroad from liability does not extend to protect company against death by negligence in running train without vestibule and at unusual rate of speed, Northern Pacific Ry. Co. v. Adams (C. C. A.) 116 Fed. Rep. 324.

Action for death because of failure to maintain lights on fish traps, McGowan v. Larsen (C. C. A.) 66 Fed. Rep. 910.

Action and lien will lie for deaths on both steamers by wrongful act in collision of steamers, The Premier 59 Fed. Rep. 797, affirmed (C. C. A.) 70 id. 874.

This section construed with 81 §37 gives administrator right of action only in favor of wife or child living, Deuber v. Northern Pacific Ry. 100 Fed. Rep. 424.

Cited 89 W. 634.

Jackson Est. 72 W. 233.

Injury of minor gives two causes of action, one to parents and one to child, Harris v. Puget Sound Elec. Ry. 52 W. 299.

No action by personal representative for minor's death, Winfree v. Nor. Pac. R. Co. 173 Fed. 65.

If wife improperly joined she may be dismissed—child must contribute to support of parents, Dean v. Oregon R. & N.



Co. 38 W. 565.

Father and administrator both have action for same wrong, *Hedrock v. Ilwaco R. & N. Co.* 4 W. 400; measure of damages, *id.*

Punitive damages cannot be recovered—special damages need not be pleaded—what facts may be shown, *Atrops v. Costello* 8 W. 149.

If parents have been divorced and the child awarded to the father, but returned to the mother, the mother may maintain action, *Clark v. Northern Pacific Ry. Co.* 29 W. 139.

When child had run away from home, *Dean v. O. R. & N. Co.* 44 W. 564.

**§8265. Action for Seduction of Child or Ward. §10.—10.** A father, or in case of his death or desertion of his family, the mother may maintain an action as plaintiff for the seduction of a daughter, and the guardian for the seduction of a ward, though the daughter or ward be not living with or in the service of the plaintiff at the time of the seduction or afterwards, and there be no loss of service. Cited 102 W. 580, 581.

**§8266. Female, Action for Her Own Seduction—Bar. §11.—11.** An unmarried female over twenty-one years of age may maintain an action as plaintiff for her own seduction, and recover therein such damages as may be assessed in her favor; but the prosecution of an action to judgment by the father, mother, or guardian, as prescribed in the preceding section, shall be a bar to an action by such unmarried female.

Elderly woman seeking and voluntarily submitting, held not to have been seduced (Chadwick J. speaking for the court), *Rockwell v. Day* 101 W. 580.

Action may be brought within 3 years after she became twenty-one years old, *Gates v. Shaffer*, 72 W.

Seduction a crime, §9113.

Corroboration nor previous chaste character necessary to recover, *Murilla v. Guls* 57 W. 564.

Action may be maintained for seduction in another state—rape is seduction—chaste character, *Murrilla v. Guls*, 51 W. 93.

**§8267. Falsely Charging Crime Actionable. §747.—747.** Every charge of incest, fornication, adultery, or whoredom, falsely made by any person against a female also words falsely spoken of any person charging such person with incest or the infamous crime against nature, either with mankind or the brute creation, shall be actionable in the same manner as in case of slanderous words charging a crime, the commission of which would subject the offender to death or other degrading penalties.

.Gust, 71 W.

Criminal slander, §8962.

Officer with warrant may take ball, §9182.

Words charging a female with adultery are not actionable if privileged, *Miller v.* 238.

Statements regarding woman held actionable—malice presumed from reckless statement—malicious intent pleaded by implication, *Stewart v. Major* 17 W.

**§8268. Guardian Ad Litem for Infant. §12.** When an infant is a party, he shall appear by guardian, or if he has no guardian, or in the opinion of the court the guardian is an improper person, the court shall appoint one to act. Said guardian shall be appointed as follows:

1. When the infant is plaintiff, upon the application of the infant, if he be of the age of fourteen years, or if under that age, upon the application of a relative or friend of the infant.

2. When the infant is defendant, upon the application of the infant, if he be of the age of fourteen years, and apply within thirty days after the service of the summons; if he be under the age of fourteen, or neglect to apply, then upon the application of any other party to the action, or of a relative or friend of the infant. L. '91 69.

Court acquires no jurisdiction in county road condemnation if no guardian ad litem for minor appointed, *State ex Davies v. Court* 102 W. 395.

General guardian may prosecute and defend, §§9908, 9907; but see §9913.

Guardian liable for costs, §7469.

Age of majority, §580; liability of minor on contracts, §582; guardian ad litem in probate sales, §9913; in justice's court, §9417.

Judgment allowed by guardian ad litem will not be set aside for constructive fraud—an important witness not being called, *Burke v. Northern Pac. R. Co.* 86 W. 37.

Guardian ad litem did not appeal, case was reversed, did not appeal second trial, held not misconduct, *Prince v. Mottman* 84 W. 287.

Court may revoke appointment and appoint anew without review *State ex rel. Barnard v. Superior Court* 74 W. 559.

In joint action by non-resident parent and child, parent may be appointed guardian ad litem, *Shannon v. Mining Co.* 24 W. 119; and see, *Zelmantz v. Blake*, 39 W. 6.

Appearance of minors without guardians cannot be objected to after pleading to merits, *Blumauer v. Clock* 24 W. 596; *Donald v. Ballard* 34 W. 576.

Supplementary—AN ACT relating to the appointment of guardian ad litem of insane persons. Approved March 13, 1899. Laws '99 p 144.

§8269. **Guardians Ad Litem For Insane.** §1. When an insane person is a party to an action in the superior courts he shall appear by guardian, or if he has no guardian, or in the opinion of the court the guardian is an improper person, the court shall appoint one to act as guardian ad litem. Said guardian shall be appointed as follows:

1. When the insane person is plaintiff, upon the application of a relative, or friend of the insane person.

2. When the insane person is defendant, upon the application of a relative or friend of such insane person, such application shall be made within thirty days after the service of summons if served in the State of Washington and if served out of the state or service is made by publication, then such application shall be made within sixty days after the first publication of summons or within sixty days after the service out of the state. If no such application be made within the time above limited, application may be made by any party to the action.

General guardian may prosecute and defend §9905; may agree to partition without suit, §8330.

It is the duty of the plaintiff to suggest insanity and have guardian appointed, *Townsend v. Price* 19 W. 415.

§8270. **All Persons Interested Must Be Brought In.** §13.—13. All persons interested in the cause of action, or necessary to the complete determination of the question involved, shall, unless otherwise provided by law, be joined as plaintiffs when their interest is in common with the party making the complaint, and as defendants when their interest is adverse to the plaintiff: Provided, That where good cause exists, which shall be made to appear in the complaint, why a party who should be a plaintiff cannot, from a want of consent on his part, or otherwise, be made such plaintiff, he shall be made a defendant.

Demurrer for defect of parties, §8346; non-suit, §8122.

Bringing in new parties, §8277.

Plaintiffs taking separate titles to parts of land and holding in common may sue—several verdict, *Lebovitz v. Cogswell* 83 W. 174.

Upper appropriators not necessary parties in action to enjoin diversion of water, *Beck v. Bono* 59 W. 479.

Tenant in possession is the only necessary party defendant in ejectment, §7517; is an exception to §8270, *Raybond v. Morrison* 9 W. 156.

Lienors on logs may all join and have liens established in action for damages for destruction of their security, *Peterson v. Sayward* 9 W. 503.

Title adverse to mortgagor acquired prior to mortgage cannot be litigated in foreclosure, *California Safe Deposit Co. v. Cheney Electric Light Etc. Co.* 12 W. 138.

Actions will be retained in court until all necessary parties are brought in, *Hannegan v. Roth* 12 W. 695.

All the holders of an installment or coupon mortgage liability must join as plaintiffs, *Bacon v. O'Keefe* 13 W. 655.

Receiver of a partnership is a necessary party in the foreclosure of a lien on partnership property, *Denny v. Cole* 22 W. 372.

Partners are necessary parties to enforce contract with partnership though receiver has been appointed, *Flynn v. Furth* 25 W. 105.

Decree in intervention establishing mortgage does not affect prior decree of distribution in probate, *Mason v. McLean* 6 W. 31.

In mandamus to compel issuance of tax deed owners are proper parties, *State ex rel. Race v. Cranney* 30 W. 594.

Administrator when not surviving partner is not necessary party to action on promissory note against surviving partner, *Harrington v. Herrick* (C. C. A.) 64 Fed. Ren. 468.

Defect of parties must be raised by answer or demurrer *Harrington v. Miller* 4 W. 808; not by objection to testimony, *Green v. Finnell* 22 W. 186.

In replevin, one in possession only necessary party, *Seattle Nat. Bank v. Meerwaldt* 8 W. 630; See *O'Brien v. Seattle Ice Co.* 43 W. 217.

Trustee in mortgage proper party, *Thompson v. Huron Lumber Co.* 4 W. 600. Joint lessees must join, *Deitz v. Winehill* 6 W. 109.

State not necessary party in appropriation by boom company of tide lands under contract of sale, *North River Boom Co. v. Smith* 15 W. 138; *Seattle & M. Ry. Co. v. State* 7 W. 150; See, *Samish Boom Co. v. Callvert* 27 W. 611; *State ex rel. Trimble v. Sup. Ct.* 31 W. 445; *State ex rel, Att'y Gen'l. v. Sup. Ct.* 26 W. 381.

For recovery of premises, all owners must join where cause of action common, *Snvder v. Harding* 34 W. 286.

Two companies under same management may be joined in action for joint trespass, *Heybrook v. Index Lum. Co.* 49 W. 378.

Dummy lessee need not be joined, *Capps v. Frederick* 44 W. 38.

City not necessary in mandamus against treasurer on executed warrant, *Savage v. Sternberg* 19 W. 679.

State not necessary in action by lessee of state lands for trespass, *Sequim Bay Can Co. v. Bugge* 49 W. 127.

Owners of separate parcels cannot join to quiet title, *Utterback v. Meeker* 16 W. 185.



Persons who must be joined, *State ex Walla v. Oregon R. & N. Co.* 40 W. 398; *rel. Reed v. Gormley* 40 W. 601; *Walla Smithson Land Co. v. Brautigan* 16 W. 174.

**§8271. If Numerous Persons, One or More, May Sue. §14.—14.** When the question is one of common or general interest to many persons, or where the parties are numerous and it is impracticable to bring them all before the court, one or more may sue or defend for the benefit of the whole.

Part could not sue for all under the contract, *Vashon Fruit Union v. Godwin & Co.* 87 W. 384.

When parties cannot be substituted after appeal, *Hight v. Batley* 32 W. 464.

A part of numerous bondholders may foreclose a trust deed for all, *Clay v. Selah Valley Irrigation Co.* 14 W. 543.

Courts will not take jurisdiction of con-

troversy between members of voluntary association, when there exists remedy in the association, *Herman v. Plummer* 29 W. 363.

One creditor may maintain bill though he mentions other creditors but does not invite them to join, *Morrison v. Blue Star Nav. Co.* 26 W. 541.

**§3272. Assignee of Chose in Action May Sue—Counterclaim. §15.** Any assignee or assignees of any judgment, bond, specialty, book account, or other chose in action, for the payment of money by assignment in writing, signed by the person authorized to make the same, may, by virtue of such assignment, sue and maintain an action or actions in his or her name, against the obligor or obligors, debtor or debtors, therein named, notwithstanding the assignor may have an interest in the thing assigned: Provided. That any debtor may plead in defense a counter claim or an offset, if held by him against the original owner, against the debt assigned, save that no counter claim or offset shall be pleaded against negotiable paper assigned before due, and where the holder thereof has purchased the same in good faith and for value and is the owner of all the interest therein. L. '91 69.

Assignee of mortgage held real party at interest in foreclosure, *State Finance Co. v. Moore* 103 W. 298.

Assignee may bring action though assignor retains interest, *Olsen v. Hagan* 102 W. 321.

Trustee express trust may maintain action to quiet title in his own name, *Ritchie v. Trumbull* 89 W. 389.

Assignments without consideration sustained, *Yamamoto v. Puget Sound Lum. Co.* 84 W. 411.

Assignee of executory contract took title free of counterclaim, *King v. West Grocery Co.*, 72 W.

A claim by persons purchasing land, under a contract procured by fraud, for the return of money paid under the contract, is enforceable in the name of the assignee, *Bell v. Jovita Heights Co.* 71 W. 7.

Assignee may sue to obtain relief against fraud, *Conaway v. Co-Operative Homebuilders*, 65 W. 39.

Mere assignment in writing is sufficient, *Von Tobel v. Stetson & Post Mill Co.* 32 W. 683.

Assignee of contract for stock in corporation may sue for violation, *Grant v. Walsh* 36 W. 190.

Husband had note assigned to wife and directed action in wife's name on note to him, held, an assignment and that defendant can only plead his equities in defense, *Lodge v. Lewis* 32 W. 191.

If the plaintiff pending the action assigns his cause of action, the assignee, and not the defendant, is the proper party to take advantage of it, *Box v. Kelso* 5 W. 360.

Mere personal torts are not assignable. An assignee cannot sue for injury to the business credit and reputation by malicious attachment of his insolvent debtor, *Slauson v. Schwabacher* 4 W. 783.

Written assignment is not necessary to show title in the plaintiff to a promissory

note, *Seattle National Bank v. Emmons* 16 W. 585.

When plaintiff assigns his cause of action, and substitution is made, notice should be given the defendant, *Powell v. Nolan* 27 W. 335.

Assignee for collection may maintain action on a promissory note, *McDaniel v. Pressler* 3 W. 636.

Notice to the debtor of an assignment of a chose in action before garnishment is not essential to protect assignee, *Bellingham Bay Boom Co. v. Brisbols* 14 W. 173.

Oral evidence of written assignment admitted without objection is sufficient, *Belle City Mfg. Co. v. Kemp* 27 W. 111.

Assignment of part of chose in action does not make action equitable, *Barto v. Seattle & I. Ry. Co.* 28 W. 179.

Action may be maintained on equitable assignment as in the case of contractor with city of part of his claim for work, *Dickerson v. Spokane* 26 W. 292.

Where 70 per cent is payable to contractor on public improvement before completion he may assign, *Dowling v. Seattle* 22 W. 592.

Where commission has been wrongfully charged on mortgage foreclosure sales for less than debt, judgment creditor cannot assign the same, *Spinney v. Pierce County* 20 W. 126.

Assignee of foreign administrator may sue on note and for damages on note, *Munson v. Exchange Natl. Bank* 19 W. 125; *Waldo v. Milroy* 19 W. 156.

Assignment of promissory note may be by parol, *Seattle Natl. Bank v. Emmons* 16 W. 585.

One joint creditor cannot assign without consent of debtor, *Grippen v. Benham* 5 W. 589.

Assignment of note to attorney for collection is sufficient to authorize suit, *Riddell v. Prichard* 12 W. 601.

Assignee of promissory note by delivery

may maintain action, Harrisburg Trust Co. v. Shufeldt (C. C. A.) 87 Fed. Rep. 669.

**§8273. One or More Persons Severally Liable May Be Sued. §16.—16.** Persons severally liable upon the same obligation or instrument, including the parties to bills of exchange and promissory notes, may all or any of them be included in the same action at the option of the plaintiff.

Surety on joint and several bond may be sued separately, Kanters v. Kotick 102 W. 523.

Separate actions against maker and indorser of note sustained, Petri v. Manny 99 W. 601.

Statute is rule for federal courts—principals on bond not indispensable parties to action, Columbia Digger Co. v. Rector 215 Fed. 618.

Maker and guarantor of note sued jointly—cause not removable to federal court, German-Am. Bank v. Gas Service Corp. 228 Fed. 827.

Judgment against several parties, §8090;

**§8274. No Abatement Because of Death or Disability. §17.—17.** No action shall abate by the death, marriage, or other disability of the party, or by the transfer of any interest therein, if the cause of action survive or continue; but the court may at any time within one year thereafter, on motion, allow the action to be continued by or against his representatives or successors in interest.

Action does not abate on appeal, supreme court may recall remittitur if substitution was not made, Gordon v. Hillman 102 W. 411.

Notice of appeal to assignee of judgment not necessary, Wright v. Seattle Grocery Co. 101 W. 266.

Real party in interest is "successor", §8255.

Specific performance, §10005.

Actions by and against executors etc, §§7961, 9885.

Limitation suspended, §8176.

Transfer of railroad property does not abate condemnation proceedings Oregon-W. R. & N. Co. v. Wilkenson 188 Fed. 363.

Estate of surety liable on supersedeas bond—summary judgment and enforcement, Olson v. Seldovia Salmon Co. 89 W. 547.

Transfer of property being condemned does not abate action, Oregon etc. R. & N. Co. v. Wilkinson, 188 Fed. 363.

Death of corporate officer does not abate action, State ex rel. Dyer v. Middle Kittitas Irr. Dist. 56 W. 488.

Party substituted in injunction case on appeal, Baker v. Northwest etc. Co. 33 W.

**§8275. Action for Death Survives to Wife or Child. §18.** No action for a personal injury to any person occasioning his death shall abate, nor shall such right of action determine, by reason of such death, if he have a wife or child living, or leaving no wife or issue, if he have, dependent upon him for support and resident within the United States at the time of his death, parents, sisters or minor brothers, but such action may be prosecuted, or commenced and prosecuted, in favor of such wife or in favor of the wife and children, or if no wife, in favor of such child or children, or if no wife or child or children, then in favor of his parents, sisters or minor brothers who may be dependent upon him for support, and resident in the United States at the time of his death. L. '09 566.

Action shall not abate, §§8259, 8274.

Action for personal injury and death separable, Frescoln v. Puget Sound Tr., L. & P. Co. 225 Fed. 441.

Above section did not repeal §8264, Mesher v. Osborne 75 W. 439.

Injured releasing damages bars benefi-

summons to joint, etc., debtors, §8449; after judgment §8080.

Contractor or administrator and surety on bond may be joined, Spokane v. Costello 57 W. 183.

Principal not a necessary party in action on indemnity bond, Pacific Bridge Co. v. U. S. Fidelity Co. 33 W. 47.

An endorser of a promissory note may be joined as defendant with the maker, 7 W. 321.

Verbal promisor to pay promissory note and the maker are proper parties defendant, Gilmore v. Skookum Box Factory 20 W. 703.

**§8275. Action for Death Survives to Wife or Child. §18.—17.** No action shall abate by the death, marriage, or other disability of the party, or by the transfer of any interest therein, if the cause of action survive or continue; but the court may at any time within one year thereafter, on motion, allow the action to be continued by or against his representatives or successors in interest.

Succeeding city officials substituted in mandamus to compel local improvement reassessment, Waldron v. Snohomish 41 W. 566.

An action for damages for the loss of timber and subsequent general assignment for the benefit of creditors; held, the action did not abate, Box v. Kelso 5 W. 360.

Failure to present claim to administrator after the death of a party defendant will not defeat an appeal, Strong v. Eldridge 8 W. 595.

Attempt at substitution of executor for deceased failed, Neff v. Neff 32 W. 82.

Real party in interest should be substituted after assignment and notice given the defendant, Powell v. Nolan 27 W. 345.

The action abates after one year, but the action is not barred, Overlock v. Shinn 28 W. 205.

The common law rule of abatement on the death of a party is applicable to equity cases, id.

Conveyance of property during suit, see, Vietzen v. Otis 46 W. 402.

On death of joint debtor, action survives against his representatives, Megrath v. Gilmore 15 W. 558.

**§8275. Action for Death Survives to Wife or Child. §18.** No action for

a personal injury to any person occasioning his death shall abate, nor shall such right of action determine, by reason of such death, if he have a wife or child living, or leaving no wife or issue, if he have, dependent upon him for support and resident within the United States at the time of his death, parents, sisters or minor brothers, but such action may be prosecuted, or commenced and prosecuted, in favor of such wife or in favor of the wife and children, or if no wife, in favor of such child or children, or if no wife or child or children, then in favor of his parents, sisters or minor brothers who may be dependent upon him for support, and resident in the United States at the time of his death. L. '09 566.

claries, Brodie v. Washington W. P. Co. 92 W. 574.

Applies to female as well as male decedents, Thompson v. S. R. & S. Ry., 71 W.

There must be dependence to recover, Kanton v. Kelly, 65 W. 614.

Dependency must be of substantial de-



gree, Bortle v. Northern Pac. R. Co. 60 W. 552.

Evidence of physical condition of wife and children not admissible, Seattle Elec. Co. v. Hartless 144 Fed. 379.

Wife and children properly substituted in action for personal injuries—section independent of §8259, Swanson v. Pacific Shipping Co. 60 W. 87.

**§8276. Holder of Contract for Land May Make Vendor and Vendee Parties.** §19.—19. In any action brought for the recovery of the purchase money against any person holding a contract for the purchase of lands, the party bound to perform the contract, if not the plaintiff, may be made a party, and the court in, final judgment, may order the interest of purchaser to be sold or transferred to the plaintiff upon such terms as may be just, and may also order a specific performance of the contract in favor of the complainant, or the purchaser, in case a sale be ordered.

**§8277. Controversy Must Be Determined Entirely—Parties May Be Brought In.** §20.—20. The court may determine any controversy between parties before it when it can be done without prejudice to the rights of others, or by saving their rights; but when a complete determination of the controversy cannot be had without the presence of other parties, the court shall cause them to be brought in.

Trustees of irrigation company and trustee under mortgage to secure bonds may be made parties in action to enjoin sale of property by execution creditor enforcing levy for assessment, Huxtable v. Berg 98 W. 616.

Indispensable parties, §8270; non-suit, §8122.

Intervention, §8280; interpleader, §8279.

Court cannot order personal service outside state, State ex rel. Hopman v. Superior Court 88 W. 612.

Court may bring in assignor where defendant sets up equitable defense in action on assigned account, State ex Adjustment Co. v. Court, 67 W. 355.

Power to require necessary parties to be brought in is inherent and discretion-

ary—mandamus will not lie, In re Clerk 55 W. 465.

In mortgage foreclosure persons interested may be proper parties but not necessary parties, Harrington v. Miller 4 W. 808.

Court will not proceed without necessary party, Hannegan v. Roth 12 W. 695.

Garnishee A owes B and defendant C; held, B should be made a party, Moore v. Gilmore 16 W. 123.

Party should be brought in if it appears he had any interest and would not be estopped, Murne v. Schwabacher 2 W. T. 130; id, 192.

Where deed is in escrow, action for delivery of deed is against escrow holder, and vendor not necessary, Bronx Inv. Co. v. Nat'l. Bank of Com. 47 W. 566.

**§8278. New Party Entitled to Same Notice as Original Party.** §21.—21. When a new party is introduced into an action as a representative or successor of a former party, such new party is entitled to the same summons to be served in the same manner as required for defendants in the commencement of an action.

**§8279. Defendant May Surrender Subject Matter and Have Real Party at Interest Substituted.** §22.—22. A defendant against whom an action is pending upon a contract, or for specific real or personal property, at any time before answer, upon affidavit that a person not a party to the action, and without collusion with him, makes against him a demand for the same debt or property, upon due notice to such person and the adverse party, may apply to the court for an order to substitute such person in his place, and discharge him from liability to either party on his depositing in court the amount of the debt, or delivering the property or its value to such person as the court may direct; and the court may in its discretion make the order.

Action or deposit in court, §8282.

**§8280. Intervention.** §23.—23. Any person may, before the trial intervene in an action or proceeding, who has an interest in the matter in litigation in the success of either party, or an interest against both. An intervention takes place when a third person is permitted to become a party to an action or proceeding between other persons, either by joining the plaintiff, in claiming what is sought by the complaint, or by uniting with the defendant in resisting the claims of the plaintiff, or by demanding anything adversely to both the plaintiff and the defendant, and is made by a complaint setting forth the grounds upon which the intervention rests, filed by leave of the court or judge on the ex parte motion of the party desiring to intervene.

Bak with insurance policy as collateral may intervene in action on policy, Mountain Timber Co. v. Lumber Ins. Co. 99 W. 243.

Petition in intervention three years after

judgment placed in escrow properly denied, Longmire v. Yakima, Etc., Co. 95 W. 302.

Trial ready to proceed, court properly

struck late complaint in intervention, *Schnebly v. Rehmke* 78 W. 565.

It seems there must be privity of contract or an interest in the rem to intervene, *State ex rel. Williams v. Superior Court* 91 W. 40.

Order denying motion to strike complaint in intervention not subject of appeal or certiorari, *State ex rel. Rutter v. Superior Court* 91 W. 304.

Intervention by lessee in condemnation proceedings sustained, *North Coast R. Co. v. Gentry* 58 W. 82.

Assignee of part of mortgaged property may intervene after action brought—payment—tender, *Murray v. O'Brien* 56 W. 361.

Citizen cannot intervene in action by councilman to enjoin city clerk from certifying recall petition, *Hilzinger v. Gillman* 56 W. 228.

Intervention too late after judgment, *Seattle & N. R. Co. v. Bowman* 53 W. 416.

Creditors (lessors) with improved claims cannot intervene in mortgage foreclosure by lessee in insolvent corporation, *Hindman v. Calvin* 47 W. 382.

Allowance in course of trial to raise new question discretionary, *Johnson v. Conner* 48 W. 431.

Attachment on older claim against absentee from state will be vacated on intervention of mortgagee, *Perkins v. Bailey* 38 W. 46.

Taxpayer has not interest to intervene in action against district by publisher of text books on contract with state board, *Westland Pub. Co. v. Royal* 36 W. 399.

Intervention is in time after motion for default of the defendant—creditor without lien cannot intervene in foreclosure, *Thompson v. Huron Lumber Co.* 4 W. 600.

Party intervening successfully is entitled to notice of appeal, *Fairchild v. Binman* 13 W. 1; *Wiseman v. Eastman* 21 W. 163.

An attaching creditor cannot intervene in receivership proceedings and has no

right of appeal, *State ex rel. Arthur Machinery Co. v. Superior Court* 7 W. 77.

The property in controversy must be the same, *McNamara v. Crystal Mining Co.* 23 W. 26.

Receiver of insolvent bank may intervene in cases involving pledged assets of the bank, *Muhlenberg v. Tacoma* 25 W. 36.

Principal must intervene if property in hands of agent and is being applied on liability of agent, *Murne v. Schwabacher Bros. & Co.* 2 W. T. 191.

Held that stockholders in corporation could not intervene in action concerning lands when corporation had conveyed, *Bissell v. Taylor* 7 W. 324.

Court may in its discretion allow other than mechanics' lienors to intervene in action to foreclose mechanics' liens, *Washington Rock etc. Co. v. Johnson* 10 W. 445.

In action to compel issuance of stock intervenor cannot ask the reissuance of deed for fraud in issuance of stock for consideration, *Boardman v. Hager* 24 W. 487.

Demurrer to intervention is *res judicata*, *Plant v. Carpenter* 19 W. 621.

Creditor of estate cannot intervene in action to recover realty from administrator, *Churchill v. Stephenson* 14 W. 620.

Principal failed to intervene when goods were seized in supplementary proceedings and held estopped, *Murne v. Schwabacher* 2 W. T. 191.

Intervention cannot be had after appeal—appeal bond insufficient, *Hight v. Batley* 32 W. 165.

Intervener foreclosed mortgage in action to cancel same—leave to intervene, *Pickle v. Anderson*, 62 W. 552.

Demurrer to petition in intervention sustained is bar—dismissal of bill in equity is bar, *State ex rel. Schmidt v. Superior Court*, 62 W. 556.

**§8281. Service on Parties By Intervenor—No Delay.** §24.—24. When leave is given to intervene, a copy of the intervenor's complaint shall be served upon the parties to the action or proceedings who have not appeared, or publication of a notice of the intervention containing a brief statement of the nature of the intervenor's demand shall be made in all cases where there are absent or non-resident defendants. The notice shall be published in the same manner and for the same length of time as prescribed in this act for publication of summons. And the complaint shall also be served upon the attorneys of the parties who have appeared, who may answer or demur to it as if it were an original complaint. The court shall determine upon the rights of the intervenor at the same time the action is decided, and if the claim of the party intervening is not sustained, he shall pay all costs incurred by the intervention: Provided, That no intervention shall be cause for delay in the trial of an action between the original parties thereto beyond the term to which the action is brought.

**Supplementary—AN ACT to provide for the determination of conflicting claims to property, money or indebtedness.** Approved February 19, 1890. Laws '90 p 93.

**§8282. Bailor or Trustee May Bring Action.** §1. Any one having in his possession, or under his control, any property or money, or being indebted, where more than one person claims to be the owner of, entitled to, interested in, or to have a lien on, such property, money or indebtedness, or any part thereof, may commence an action in the superior court against all, or any of such persons, and have their rights, claims, interest or liens, adjudged, determined and adjusted in such action.



Interpleader former section, §8279.

Permitting judgment in garnishment precludes action, *Benjamin v. Ernst* 83 W. 59.

Provision for collection of poll tax, L '05 297 saved by this section giving day in court, *Thurston v. Tenino Stone Quarries* 44 W. 351.

Appealable regardless of amount, *Agnew v. Barto* 48 W. 66.

Fund had been garnished and was not proper subject of action, *Belond v. Rayburn* 38 W. 406.

A complaint is sufficient alleging that the plaintiff is indebted, had been garnished by two writs of garnishment, that judgment had been rendered against him on one of the writs and the judgment was being assailed by the party issuing the other writ. *Mosher v. Bruhn* 15 W. 332.

A deposit in court by garnishee of the

principal amount without interest does not entitle him to a discharge, *Bellingham Bay Boom Co. v. Brisbols* 14 W. 173.

Payment by a garnishee in satisfaction of a judgment is not a deposit within the meaning of this section, *Ward v. Ward* 14 W. 640.

Interpleader will not lie when party had given bond in claim for property and judgment had been given against him on bond, *Carstens v. Gustin* 19 W. 403.

This act and §8277 empowers the court to determine any controversy and give judgment between the parties, *Seattle v. Turner* 29 W. 515.

Petitioner need not be threatened with suit, *Daulton v. Stuart* 30 W. 562.

Garnishee may maintain interpleader—equitable proceeding, *Smith v. Dement Bros. Co.* 100 W. 139.

**§8283. Disclaimer and Non-Liability for Costs—Procedure.** §2. In all actions commenced under the preceding section, the plaintiff may disclaim any interest in the money, property or indebtedness, and deposit with the clerk of the court the full amount of such money or indebtedness, or other property, and he shall not be liable for any costs accruing in said action. And the clerks of the various courts shall receive and file such complaint, and all other officers shall execute the necessary processes to carry out the purposes of this act, free from all charge to said plaintiff; and the court, in its discretion, shall determine the liability for costs of the action.

**§8284. Real Parties at Interest to Appear—Procedure.** §3. Either of the defendants may set up or show any claim or lien he may have to such property, money or indebtedness, or any part thereof, and the superior right, title or lien, whether legal or equitable, shall prevail. The court, or judge thereof, may make all necessary orders during the pendency of said action, for the preservation and protection of the rights, interests or liens of the several parties.

## PARTITION.

**§8285. Partition of Real Property.** §552.—552. When several persons hold, and are in possession, of real property, as tenants in common, in which one or more of them, have an estate of inheritance, or for life, or years, an action may be maintained by one or more of such persons, for a partition thereof according to the respective rights of the persons interested therein, and for sale of such property, or a part of it, if it appear that a partition cannot be made without great prejudice to the owners.

Presumption that property may be equitably divided—"great prejudice" applied, *Williamson Investment Co. v. Williamson* 96 W. 529.

Survivorship in joint tenancy abolished, §3426.

Estate for life or years remainder in fee cannot be partitioned, *Easley v. Easley* 78 W. 505.

Partition may be had by persons having title whatever the interest, title not required to be tried in separate action, *Hill v. Young* 7 W. 33; *Kromer v. Friday* 10 W. 639.

Party must establish right to conveyance before he can ask partition, *Chapman v. Allen* 11 W. 627.

Partition by probate court held void, but good as an act of the parties, *Brazes v.*

*Schofield* 2 W. T. 109.

Voluntary partition inter partes is void when one of the deeds invalid—decree in partition not adversary is not conclusive on parties as against claimants who were not parties, *Pacific Bank v. Hannah (C. C. A.)* 90 Fed. Rep. 72.

Where joint owners contemplated property would be sold shortly and it was not, partition may be had, *Griggs v. Gower*, 29 W. 86.

Partition barred in ten years, *Hyde v. Britton*, 41 W. 277; see *Graves v. Graves*, 48 W. 664.

Cotenant who, under impression of full ownership, makes improvements, entitled in partition to part containing improvements, *Leake v. Hayes*, 13 W. 213.

**§8286. Complaint.** §553.—553. The interest of all persons in the property, shall be set forth in the complaint specifically and particularly as far as known to the plaintiff, and if one or more of the parties, or the share or quantity of interest of any of the parties be unknown to the plaintiff, or be uncertain or contingent, or the ownership of the inheritance depend upon an

executory devise, or the remainder be a contingent remainder, so that such parties cannot be named, that fact shall be set forth in the complaint.

Plaintiff must show title, *Chapman v. Allen* 11 W. 627. Substantial compliance sufficient, *Kromer v. Friday*, 10 W. 621.

**§8287. Lienors May Be Made Parties.** §554.—554. The plaintiff may, at his option, make creditors having a lien upon the property or any portion thereof, other than by a judgment or decree, defendants in the suit. When the lien is upon an undivided interest or estate of any of the parties, such lien, if a partition be made, is thenceforth a lien only on the share assigned to such party; but such share shall be first charged with its just proportion of the costs of the partition, in preference to such lien.

Liens are adjusted upon voluntary partition by the parties, *Port v. Parfit* 4 W. 369.

**§8288. Notice to Known and Unknown Parties.** §555.—555. The notice shall be directed by name to all the tenants in common, who are known, and in the same manner to all lien creditors who are made parties to the suit, and generally to all persons unknown, having or claiming an interest or estate in the property.

**§8289. Publication to Unknown Parties.** §556.—556. If a party, having a share or interest in, or lien upon the property, be unknown, or either of the known parties reside out of the State or cannot be found therein, and such fact be made to appear by affidavit, the notice may be served by publication, as in ordinary cases. When service is made by publication, the notice must contain a brief description of the property which is the subject of the suit.

Service by publication, §8441.

**§8290. What Answer Shall Set Out.** §557.—557. The defendant shall set forth in his answer, the nature, and extent of his interest in the property, and if he be a lien creditor, how such lien was created, the amount of the debt secured thereby and remaining due, and whether such debt is secured in any other way, and if so, the nature of such other security.

Defendant in possession having entered profits, *Lake v. Hayes* 13 W. 213; Blackwell on unproductive estate may set up entire well v. McLean 9 W. 301. May have credit title and get partition, have accounting for money paid at request of plaintiff to for taxes and betterments though made by defend title, *Blackwell v. McLean* 9 W. husband and not be liable for rents and 301.

**§8291. Rights to Be Tried Before Partition or Sale.** §558.—558. The rights of the several parties, plaintiffs as well as defendants, may be put in issue, tried and determined in such suit, and where a defendant fails to answer, or where a sale of the property is necessary, the title shall be ascertained by proof to the satisfaction of the court, before the decree for partition or sale is given.

Title may be quieted and partition granted in the same action, *Crowley v. Byrne*, 71 W. 444. *v. Friday* 10 W. 639. Court has power to try title—title of ancestor in heirs' name shown, *Womach v. Sandygren* 96 W. 12.

**§8292. Sale—Referees—Unknown Owners.** §559.—559. If it be alleged in the complaint and established by evidence, or if it appear by the evidence without such allegation in the complaint, to the satisfaction of the court, that the property or any part of it, is so situated that partition cannot be made without great prejudice to the owners, the court may order a sale thereof, and for that purpose may appoint one or more referees. Otherwise, upon the requisite proofs being made, it shall decree a partition according to the respective rights of the parties as ascertained by the court, and appoint three referees, therefor, and shall designate the portion to remain undivided for the owners whose interests remain unknown or are not ascertained.

Decree designating "referee" as "trustee" held good, *Blackwell v. McLean* 9 W. 301. Sale may be had though necessity has not been alleged, *Hill v. Young* 7 W. 33.

**§8293. Allotment in Kind—Report of Referees.** §560.—560. In making the partition, the referees shall divide the property, and allot the several portions thereof to the respective parties, quality and quantity relatively considered, according to the respective rights of the parties as determined by the court, designating the several portions by proper landmarks, and may employ a surveyor with the necessary assistants to aid them therein. The referees shall make a report of their proceedings, specifying therein



the manner of executing their trust, describing the property divided and the shares allotted to each party, with a particular description of each share.

**§8294. Confirmation of Report. §561.—561.** The court may confirm or set aside the report in whole or in part, and if necessary appoint new referees. Upon the report being confirmed a decree shall be entered that such partition be effectual forever, which decree shall be binding and conclusive:

1. On all parties named therein, and their legal representatives who have at the time any interest in the property divided, or any part thereof as owners in fee, or as tenants for life or for years, or as entitled to the reversion, remainder or inheritance of such property or any part thereof, after the termination of a particular estate therein, or who by any contingency may be entitled to a beneficial interest in the property, or who have an interest in any undivided share thereof, as tenants for years or for life.

2. On all persons interested in the property to whom notice shall have been given by publication.

3. On all other persons claiming from or through such parties or persons or either of them.

Court may set aside report of referees and re-allot, *Hamlin v. Hamlin* 90 W. 467.

**§8295. When Tenants and Third Parties Not Affected. §562.—562.** Such decree and partition shall not affect any tenants, for years or for life, of the whole of the property which is the subject of partition, nor shall such decree and partition preclude any persons except such as are specified in the last section, from claiming title to the property in question, or from controverting the title of the parties between whom the partition shall have been made.

**§8296. Costs. §563.—563.** The expenses of the referees, including those of a surveyor and his assistants, when employed, shall be ascertained and allowed by the court, and the amount thereof, together with the fees allowed by law to the referees, shall be paid by the plaintiff and may be allowed as costs.

**§8297. Allotment of Part—Sale of Part. §564.—564.** If the referees report to the court that the property, of which partition shall have been decreed, or any separate portion thereof is so situated, that a partition thereof cannot be made without great prejudice to the owners, and the court is satisfied that such report is correct, it may thereupon by an order direct the referees to sell the property or separate portion thereof.

**§8298. Sale of Part, Tenant's Interest Partitioned. §565.—565.** When a part of the property only is ordered to be sold, if there be an estate for life or years in an undivided share of the property, the whole of such estate may be set off in any part of the property not ordered sold.

**§8299. Parties to Be Brought In. §566.—566.** Before making an order of sale, if lien creditors, other than those by judgment or decree, have not been made parties, the court, on motion of either party, shall order the plaintiff to file a supplemental complaint, making such creditors defendants.

**§8300. Liens on Record to Be Brought In. §567.—567.** If an order of sale be made before the distribution of the proceeds thereof, the plaintiff shall produce to the court the certificate of the auditor of the county where the property is situated, showing the liens remaining unsatisfied, if any, by judgment or decree, upon the property or any portion thereof, and unless he do so the court shall order a reference to ascertain them.

**§8301. Referee to Make Findings as to Liens. §568.—568.** If it appear by such certificate or reference, in case the certificate is not produced, that any such liens exist, the court shall appoint a referee to ascertain what amount remains due thereon or secured thereby respectively, and the order of priority in which they are entitled to be paid out of the property.

**§8302. Notice to Lienors. §569.—569.** The plaintiff must cause a notice to be served at least twenty days before the time for appearance on each person having such lien by judgment or decree, to appear before the referee at a specified time and place, to make proof by his own affidavit or otherwise, of the true amount due or to become due, contingently or absolutely on his judgment or decree.

**§8303. Report of Referee. §570.—570.** The referee shall receive the evidence and report the names of the creditors whose liens are established, the amounts due thereon, or secured thereby, and their priority respectively, and whether contingent or absolute. He shall attach to his report the proof of service of the notices and the evidence before him.

**§8304. Exceptions to Referee's Report—Publication to Non-Resident Lienors. §571.—571.** The report of the referee may be excepted to by either party to the suit, or to the proceedings before the referee, in like manner and with like effect as in ordinary cases. If a lien creditor be absent from the State, or his residence therein be unknown, and that fact appear by affidavit, the court, or judge thereof, may by order direct that service of the notice may be made upon his agent or attorney of record or by publication thereof, for such time and in such manner as the order may prescribe.

**§8305. Confirmation of Report. §572.—572.** If the report of the referee be confirmed, the order of confirmation is binding and conclusive upon all parties to the suit, and upon the lien creditors who have been duly served with the notice to appear before the referee, as provided in section 569.

**§8305a. Application of Encumbered Property. §573.—573.** The proceeds of the sale of the encumbered property shall be distributed by the decree of the court, as follows:

1. To pay its just proportion of the general costs of the suit.
2. To pay the costs of the reference.
3. To satisfy the several liens in their order of priority, by payment of the sums due, and to become due, according to the decree.
4. The residue among the owners of the property sold, according to their respective shares.

**§8306. Marshaling Securities. §574.—574.** Whenever any party to the suit, who holds a lien upon the property or any part thereof, has other securities for the payment of the amount of such lien, the court may in its discretion, order such sureties to be exhausted before a distribution of the proceeds of sale, or may order a just deduction to be made from the amount of the lien on the property on account thereof.

**§8307. Trial Shall Not Delay Parties Not Affected. §575.—575.** The proceedings to ascertain the amount of the liens, and to determine their priority as above provided, or those hereinafter authorized to determine the rights of parties to funds paid into court, shall not delay the sale, nor affect any other party, whose rights are not involved in such proceedings.

**§8308. How Proceeds to Be Disposed of. §576.—576.** The proceeds of sale, and the securities taken by the referees, or any part thereof, shall be distributed by them to the persons entitled thereto, whenever the court so directs. But if no such direction be given, all such proceeds and securities shall be paid into court, or deposited as directed by the court.

**§8309. Individual Rights to Be Determined. §577.—577.** When the proceeds of sale of any shares, or parcel, belonging to persons who are parties to the suit and who are known, are paid into court, the suit may be continued as between such parties, for the determination of their respective claims thereto, which shall be ascertained and adjudged by the court. Further testimony may be taken in court, or by a referee at the discretion of the court, and the court may, if necessary, require such parties to present the facts or law in controversy, by pleadings as in an original suit.



**§8310. Sales as on Execution. §578.—578.** All sales of real property, made by the referees shall be made by public auction, to the highest bidder, in the manner required for the sale of real property on execution. The notice shall state the terms of sale, and if the property, or any part of it is to be sold, subject to a prior estate, charge or lien, that shall be stated in the notice.

Sales on execution, §7893.

Blackwell v. McLean 9 W. 301.

Neither referees nor guardian can buy at  
sa. §8319.

Notice of sale before judgment held  
good, Kromer v. Friday 10 W. 621.

Sale either public or private irregular,

Cited 84 W. 287.

**§8311. Sale on Credit for Unknown Owners. §579.—579.** The court shall, in the order of sale, direct the terms of credit which may be allowed for the purchase money of any portion of the premises, of which it may direct a sale on credit; and for that portion of which the purchase money is required by the provisions hereinafter contained, to be invested for the benefit of unknown owners, infants or parties out of the state.

**§8312. Securities and How Taken. §580.—580.** The referees may take separate mortgages, and other securities for the whole, or convenient portions of the purchase money, of such parts of the property as are directed by the court to be sold on credit, in the name of the clerk of the court, and his successors in office; and for the shares of any known owner of full age, in the name of such owner.

**§8313. Tenant's Interest May Be Sold. §581.—581.** When the estate of any tenant for life or years, in any undivided part of the property in question, shall have been admitted by the parties, or ascertained by the court to be existing at the time of the order of sale, and the person entitled to such estate shall have been made a party to the suit, such estate may be first set off out of any part of the property, and a sale made of such parcel, subject to the prior unsold estate of such tenant therein; but, if in the judgment of the court, a due regard to the interest of all the parties require that such estate be also sold, the sale may be so ordered.

**§8314. Acceptance of Proceeds by Tenant. §582.—582.** Any person entitled to an estate for life or years in any undivided part of the property, whose estate shall have been sold, shall be entitled to receive such sum in gross as may be deemed a reasonable satisfaction for such estate, and which the person so entitled shall consent to accept instead thereof, by an instrument duly acknowledged and filed with the clerk.

**§8315. When Tenant's Proceeds to Be Deposited in Court. §583.—583.** If such consent be not given, as provided in the last section, before the report of sale, the court shall ascertain and determine what proportion of the proceeds of the sale, after deducting expenses, will be a just and reasonable sum to be invested for the benefit of the person entitled to such estate for life or years, and shall order the same to be deposited in court for that purpose.

**§8316. Court Shall Protect Unknown Owners. §584.—584.** If the persons entitled to such estate, for life or years, be unknown, the court shall provide for the protection of their rights in the same manner, as far as may be, as if they were known and had appeared.

**§8317. Valuation of Vested or Contingent Interest—Investment of Proceeds. §585.—585.** In all cases of sales in partition, when it appears that a married woman has an inchoate right of dower in any of the property sold, or that any person has a vested or contingent future right or estate therein, the court shall ascertain and settle the proportionate value of such inchoate contingent or vested right or estate, and shall direct such proportion of the proceeds of sale to be invested, secured or paid over in such manner as to protect the rights and interests of the parties.

**§8318. Sales—Terms to Be Made Known—Sale by Parcels. §586.—586.** In all cases of sales of property the terms shall be made known at the time, and if the premises consist of distinct farms or lots, they shall be sold separately or otherwise, if the court so directs.

**§8319. Sales—Who Shall Not Purchase.** §587.—587. Neither of the referees, nor any person for the benefit of either of them, shall be interested in any purchase, nor shall the guardian of an infant party be interested in the purchase of any real property being the subject of the suit, except for the benefit of the infant. All sales contrary to the provisions of this section, shall be void.

**§8320. Referees' Report of Sale.** §588.—588. After completing the sale, the referees shall report the same to the court, with a description of the different parcels of land sold to each purchaser, the name of the purchaser, the price paid or secured, the terms and conditions of the sale, and the securities, if any taken. The report shall be filed with the clerk.

**§8321. Confirmation—Deeds.** §589.—589. The report of sale may be excepted to in writing by any party entitled to a share of the proceeds. If the sale be confirmed, the order of confirmation shall direct the referees to execute conveyances and take securities pursuant to such sale.

**§8322. Encumbrancers Credit if Purchaser.** §590.—590. When a party entitled to a share of the property, or an encumbrancer entitled to have his lien paid out of the sale, becomes a purchaser, the referees may take his receipt for so much of the proceeds of the sale as belonging to him.

**§8323. Investment of Funds Not Claimed.** §591.—591. When there are proceeds of sale belonging to an unknown owner, or to a person without the state, who has no legal representative within it, or when there are proceeds arising from the sale of an estate subject to the prior estate of a tenant for life or years, which are paid into the court or otherwise deposited by order of the court, the same shall be invested in securities on interest for the benefit of the persons entitled thereto.

**§8324. Investments in Name of Clerk of Court.** §592.—592. When the security for the proceeds of sale is taken, or when an investment of any such proceeds is made, it shall be done, except as herein otherwise provided, in the name of the clerk of the court and his successors in office, who shall hold the same for the use and benefit of the parties interested, subject to the order of the court.

**§8325. Securities May Be Allotted.** §593.—593. When security is taken by the referees on a sale, and the parties interested in such security by an instrument in writing under their hands, delivered to the referees, agree upon the shares and proportions to which they are respectively entitled, or when shares and proportions have been previously adjudged by the court, such securities shall be taken in the names of and payable to the parties respectively entitled thereto, and shall be delivered to such parties upon their receipt therefor. Such agreement and receipt shall be returned and filed with the clerk.

**§8326. Clerk's Record of Investments.** §594.—594. The clerk in whose name a security is taken, or by whom an investment is made, and his successors in office shall receive the interest and principal as it becomes due, and apply and invest the same as the court may direct, and shall file in his office all securities taken and keep an account in a book provided and kept for that purpose in the clerk's office, free from [for] inspection by all persons, of investments and moneys received by him, thereon, and the disposition thereof.

**§8327. Owelty of Partition.** §595.—595. When it appears that partition cannot be made equal between the parties according to their respective rights, without prejudice to the rights and interests of some of them, the court may adjudge compensation to be made by one party to another on account of the inequality of partition; but such compensation shall not be required to be made to others by owners unknown, nor by infants, unless in case of an infant it appear that he has personal property sufficient for that purpose, and that his interest will be promoted thereby.



**§8328. Infant's Share to Be Paid to Guardian.** §506.—506. When the share of an infant is sold, the proceeds of the sale may be paid by the referees making the sale, to his general guardian, or the special guardian appointed for him in the suit, upon giving the security required by law, or directed by order of the court.

**§8329. Share of Insane to Be Paid to Guardian—Bond.** §597.—597. The guardian who may be entitled to the custody and management of the estate of an insane person, or other person adjudged incapable of conducting his own affairs, whose interest in real property shall have been sold, may receive in behalf of such person his share of the proceeds of such real property from the referees, on executing a bond with sufficient sureties, approved by the judge of the court, conditioned that he will faithfully discharge the trust reposed in him, and will render a true and just account to the person entitled, or to his legal representative.

**§8330. Guardians May Agree to Partition Without Suit.** §598.—598. The general guardian of an infant, and the guardian entitled to the custody and management of the estate of an insane person, or other person adjudged incapable of conducting his own affairs, who is interested in real estate held in common or in any other manner, so as to authorize his being made a party to an action for the partition thereof, may consent to a partition without suit and agree upon the share to be set off to such infant or other person entitled, and may execute a release in his behalf to the owners of the shares or parts to which they may respectively be entitled, and upon an order of the court.

Guardians may make admissions fully in the absence of fraud or collusion, contrary to asserted rights and bind heirs *Kromer v. Friday* 10 W. 621.

**§8331. Costs.** §599.—599. The costs of partition, including fees of referees and other disbursements, shall be paid by the parties respectively entitled to share in the lands divided, in proportion to their respective interests therein, and may be included and specified in the decree. In that case there shall be a lien on the several shares, and the decree may be enforced by execution against the parties separately. When, however, a litigation arises between some of the parties only, the court may require the expense of such litigation to be paid by the parties thereto, or any of them.

Only statutory attorneys' fees can be taxed as costs, *Legg v. Legg* 34 W. 132.

### PLEADINGS—AMENDMENT.

Actions, form of—parties §8253.

Amendment—variance §8332.

Defendant served after judgment §8093a.

Ejectment, etc., improvements a counter-claim §§7522, 7523.

Forcible entry and detainer cases amended

without costs §7984.

Form of, complaint etc. §8342.

Motions and orders defined §8077.

Rules of superior courts §8431a.

Verification of §8383.

Water rights, actions §7216.

**§8332. Variance Allowed.** §105.—105. No variance between the allegation in a pleading, and the proof, shall be deemed material, unless it shall have actually misled the adverse party to his prejudice in maintaining his action or defense upon the merits. Whenever it shall be alleged that a party has been so misled, that fact shall be proved to the satisfaction of the court, and in what respect he has been misled, and thereupon the court may order the pleading to be amended upon such terms as shall be just.

Surprise not claimed from amendment, failure of proof claim of no avail, *Van Doren R. & C. Co. v. Guardian Cas. & G. Co.* 99 W. 68.

Tenant from month to month alleged "seized and possessed", held immaterial variance, *Nordgren v. Lawrence* 74 W. 305.

Complaint alleged unqualified ownership of check, answer showed it was collateral, held not a variance, *German-Am. Bank v. Wright* 85 W. 460.

Several contracts complaint pleaded profits from one, another added at trial, *McDougall v. McDonald* 86 W. 334.

Hiring under custom alleged, proof in addition of special contract if party not misled, *Liliopoulos v. Oregon-Wash. R. & N. Co.* 87 W. 396.

Scope of issues broadened without objection is not error, *Lee Hong v. Schoenwald* 86 W. 326.

Action by trustee for conversion, alleging only right of possession, proof of title and interest not variance, *Gilbert v. Morgan Lum. Co.* 87 W. 293.

Name of corporation substituted in complaint after service, *Freebon v. Chewelah Copper, etc., Co.* 89 W. 519.

Evidence in, there is no variance pleadings deemed amended, *Cremidas v. Dallas* 91 W. 441.

Larceny of "check" sustained on proof of indorsed "certificate of deposit," *State v. Garland*, 65 W. 666.

Time of making oral contract held not variance, *Cholokovitch v. Porcupine Gold*

Min. Co. 73 W. 48.

Where evidence not within the issues was received over objection that it tended to vary the terms of a written contract, but not that it was not within the issues, and the court directed that the pleadings be amended accordingly, there was no material variance, *Stocking v. Boyer*, 70 W. 615.

In quantum meruit proven when "knowledge and consent" shown, *Butterworth & Sons v. Toale* 54 W. 14.

Notice of location and pleading aided by possession in case of mining claim, *National M. & M. Co. v. Piccolo* 54 W. 617.

Notice of claim of lien for building and proof of balcony is not variance, *Stetson & Post Lum. Co. v. Sloane Co.* 61 W. 180.

Allegation of quantum meruit defendant admitting work but alleging special contract is not variance, *Griffith v. Redpath* 38 W. 540.

Plaintiff in personal injury case alleged injury by sudden jerk of car in starting proof of defective brake and sandbox used in stopping inadmissible, *Albin v. Seattle Electric Co.* 40 W. 51.

Proof in defense of libel of different fund in post office not variance, *Leghorn v. Review Publishing Co.* 31 W. 627.

In action for damages by bite of dog allegation that dog was owned by individual and proof of ownership by copartnership not fatal, *Grisson v. Hofius* 39 W. 51.

Averment of complete performance of contract proof of part performance and excuse for non-performance in entirety; held, variance and pleading to be amended on terms, *Olson v. Snake River Etc. R. R. Co.* 22 W. 139.

Disregard of plaintiff's proofs because of variance is properly cured by granting a new trial, *Ernst v. Fox* 26 W. 526.

In an action on an accident policy when proof of injury is made variance between allegation and proof as to results of injury immaterial, *Mercier v. Travelers Ins. Co.* 24 W. 147; *Allend v. Spokane etc., Co.* 21 W. 324.

Action on conditional insurance policy declared upon as unconditional held good when loss not of excepted classes, *Pencil v. Holmes Ins. Co.* 3 W. 485.

Variance in the amount of a judgment pleaded is immaterial, *Ritchie v. Carpenter* 2 W. 512.

In claim by third party to property levied on proof of right of possession may be made under allegation of ownership, *First Nat. Bank v. Hagan* 16 W. 45.

Variance between claim filed with city council for personal injury from defective sidewalk and proof on trial immaterial, *Bell v. Spokane* 30 W. 508.

Allegation of total destruction of property and proof of partial destruction is not fatal, *Sterrett v. Northport M. & S. Co.* 30 W. 164.

Where answer negatived matter not set up in complaint and proofs directed to such matter, complaint may be amended, *Morrissey v. Fawcett* 28 W. 52.

Allegation that defendant negligently drove between plaintiff's wagon and street car approaching from the rear with proof that defendant drove between plaintiff's wagon and the car is immaterial variance, *Wolf v. Hemrich Bros. Brewing Co.* 28 W.

187.

In equity party may amend pleading to conform to proofs, *Carson v. Railsback* 3 W. T. 168.

Amendments are in discretion of the court, *Williams Co. v. Miller* 1 W. T. 88; *Silsby v. Frost* 3 W. T. 388.

Judgment against defendants bad where proof shows one defendant was agent of the other and plaintiff, *Hartman v. Belden* 39 W. 655.

Where testimony fails to meet allegations of pleadings but is not objected to, non-suit properly refused, *Guley v. N. W. C. & T. Co.*, 7 W. 491; and complaint considered amended, *Murray v. Meade*, 5 W. 693; *Taylor v. Ballard*, 24 W. 191; *Richardson v. Moore*, 30 W. 406; *Gay v. Havermale* 30 W. 622; *Helphrey v. Strobach*, 13 W. 128; *Allend v. Spokane etc. Ry.*, 21 W. 324; *State v. Lorenz*, 22 W. 289; *Kinhead v. Holmes etc. Co.*, 24 W. 216; *Green v. Tidball* 26 W. 338; *Ankeny v. Clark* 1 W. 549; *Lobb v. Seattle, etc. Ry.*, 48 W. 238.

In equity, decision based on evidence introduced without objection, regardless of pleadings, *Davis v. Hinchcliffe*, 7 W. 199.

Defendant cannot urge variance where judgment based on contract pleaded in answer, *Megrath v. Gilmore*, 15 W. 558; *Rattelmiller v. Stone*, 28 W. 104; or on issues raised by answer; *Ryan v. Lambert*, 49 W. 649.

Under general allegation of negligence, any fact tending to contribute approximately to injury admissible *Uren v. Golden Tunnel M. Co.*, 24 W. 261; *Clukey v. Seattle Elec. Co.*, 27 W. 70; *Crooker v. Pac. L. & M. Co.*, 34 W. 191; *Thomson v. Issaquah S. Co.*, 43 W. 253.

Where partnership alleged, proof of incorporation inadmissible, *Kelly v. Johnson*, 5 W. 785.

Allegation that plaintiff loaned money, no variance that money loaned by plaintiff's wife but was in fact his money, *Piling v. Morse*, 5 W. 797.

Error of one figure in number of warrant immaterial where other allegations fix identity, *Roe v. Cutter*, 4 W. 611.

Proof that services were performed and a bill rendered which was stated to be satisfactory, supports recovery either on contract or quantum meruit, *Wright v. Lake*, 48 W. 469.

One who waives defense set out in answer, offers and fails to prove another defense and asks relief on defense waived, cannot object that court went out of the issues in deciding equities, *Budlong v. Budlong*, 48 W. 645.

Under general denial and plea of contributory negligence, evidence of plaintiff's intoxication admissible, *Carter v. Seattle*, 19 W. 597.

Bill of particulars limits proof to items charged therein, *Seattle v. Parker*, 13 W. 450; *Dudley v. Duval*, 29 W. 528; *Howells v. N. A. T. & T. Co.*, 24 W. 689; *American Copper etc. Wks. v. Galland-Burke etc. Co.*, 30 W. 178; but see *Spokane & I. L. Co. v. Loy*, 21 W. 501.

Allegation of \$500 policy on one building, proof of \$600 on two buildings, non-suit proper, *Waldron v. H. M. Ins. Co.*, 9 W. 534.



"Out of repair" not foundation for proof of defective construction *Bernhard v. Reeves*, 6 W. 424; *Imhoof v. N. W. L. Co.*, 43 W. 387.

Under allegation of negligence in management of car, proof of defects in mechanism admissible, *Cogswell v. West St. etc. Ry.*, 5 W. 46.

Under allegation of injury going from work to water-closet, proof of injury while going to work not material variance, *Sayward v. Carlson* 1 W. 29.

Where particular cause of street-car collision alleged, failure to prove not fatal, *Lobb v. Seattle etc., Ry.* 48 W. 238.

Special damages must be alleged to be proven, *Meeker v. Gardella*, 1 W. 139; *Kaufman v. Tacoma etc. Ry.*, 11 W. 632; *Stowe v. La Conner, etc. Co.*, 39 W. 28.

Allegations of gross negligence and permanent disability admit evidence of defects in machinery and character of work and wages of injured employee, *N. P. Ry. v. O'Brien* 1 W. 599.

Foreclosure of lien against X "Company" admits lien notice against X "Association," *I. B. & L. Co. v. Wentworth*, 1 W. 467. But lien on "lot 12, block 4016" insufficient on lots 1 and 2, block 3919; *Mt. Tacoma Mfg. Co. v. Cultum*, 5 W. 294.

Pleadings liberally construed after verdict, *Johnson v. Leonhard*, 1 W. 564; *Livesley v. O'Brien*, 3 W. 546.

**§8333. Practice in Case of Variance.** §106.—106. When the variance is not material, as provided in the last section, the court may direct the fact to be found according to the evidence, or may order an immediate amendment without costs.

**§8334. Failure of Proof.** §107.—107. When, however, the allegation of the cause of action or defense, to which the proof is directed, is not proved, not in some particular or particulars only, but in its entire scope and meaning, it shall not be deemed a case of variance within the last two sections, but a failure of proof.

Alleging contract of sale and proving consignment is failure of proof—complaint not amendable, *Hubenthal v. Creighton* 81 W. 688.

Attorney sued for money collected by fraud and deceit, on failure of proof it is error to give judgment for plaintiff for excessive fee, *McLachlan v. Gordon* 86 W. 282.

Complaint on contract for one-half the net profits, plaintiff cannot show other terms, *Chilberg v. Jones* 3 W. 530.

Failure of proof in action for alienation of husband's affections, *Stanley v. Stanley* 27 W. 570.

Failure of proof of contract in action for damages for ejection of passenger is ground for non-suit, *Magee v. Oregon Ry. & Nav. Co.* 46 Fed. Rep. 734.

Proof must correspond to allegation, *Marsh v. Wade*, 1 W. 538; *Carson v. Railsback*, 3 W. T. 168.

Cannot recover on action improperly

**§8335. Variance Allowed in Actions for Specific Personal Property.** §108.—108. Where the plaintiff in an action to recover the possession of personal property on a claim of being the owner thereof, shall fail to establish on trial, such ownership, but shall prove that he is entitled to the possession thereof, by virtue of a special property therein, he shall not thereby be defeated of his action, but shall be permitted to amend, on reasonable terms, his complaint, and be entitled to judgment according to the proof in the case.

In suit on note against defendant as maker note endorsed by others "as original makers thereof" admissible, *Hinchman v. Point Defiance R. Co.*, 14 W. 349; see *Anderson v. N. Y. L. Ins. Co.*, 34 W. 616.

Variance regarding fact not properly in issue immaterial, *Olson v. Allen*, 14 W. 684.

Allegation in slander that one has "another wife back east," proof that he has "a wife back east and is living with another woman here" is fatal variance, *Bleitz v. Carton*, 49 W. 545.

Variance material where proof does not support theory of complaint, *Koyukuk Min. Co. v. Van de Vanter* 30 W. 385; *Butler v. Carvin*, 33 W. 621; *Jacobs v. First Nat. Bank*, 15 W. 358; *Price etc. Co. v. Rinear*, 17 W. 95; *Scholey v. De Mattos*, 18 W. 504; *Dickey, v. N. P. Ry.*, 19 W. 350.

Variance as to parties or persons immaterial if adverse party not misled, *P. I. Pub. Co. v. Harris*, 11 W. 500; *Bignold v. Carr*, 24 W. 413; *Dennis v. First Nat'l Bank*, 33 W. 161; *Vulcan I. Wks. v. Burrell Co.*, 39 W. 319.

Variance as to performance of contracts immaterial if adverse party not mislead, *Bigelow v. Scott*, 2 W. T. 378; *Childs Co. v. Page*, 28 W. 128; *Dudley v. Duval*, 29 W. 528; *Meals v. De Soto Co.*, 33 W. 302; *Griffith v. Ridpath*, 38 W. 540; *Bringgold v. Spokane* 27 W. 202.

brought, although real cause of action disclosed in answer and reply, *Clark v. Sherman*, 5 W. 681.

On complaint alleging contract between plaintiff and defendant, no recovery on proof of contract between defendant and third party for plaintiff's benefit, *Haynes v. T. O. etc. Co.*, 7 W. 211, and see *Hartman v. Belden*, 38 W. 655.

Uselessness of proof does not excuse omission, *Underwood v. Tew*, 7 W. 297.

Proof of illegal consideration cannot be given under allegation of no consideration, *Lyts v. Keevey*, 5 W. 606.

Failure of proof fatal to action or defense, *Silsby v. Aldridge*, 1 W. 117; *Kerron v. M. P. L. & M. Co.* 1 W. 241; *Dudley v. Duval*, 29 W. 528; *Malloy v. Benway*, 34 W. 315; *Weber v. Snohomish Co.*, 37 W. 576.

In action for slander for calling one a tery is failure of proof, *Bleitz v. Carton*, 49 W. 545.

Replevin alleging ownership with proof of chattel mortgage not foreclosed is fatal variance. *Silsby v. Aldridge* 1 W. 117.

In replevin plaintiff pleaded ownership but not source of title putting in evidence bill of sale; held, defendant could show bill a mortgage without pleading it, *Kerron v. North Pacific Etc. Mfg. Co.* 1 W. 241.

**§8336. Amendment of Proceedings Generally.** §109. The court may, in furtherance of justice, and on such terms as may be proper, amend any pleadings or proceedings, by adding or striking out the name of any party, or by correcting a mistake in the name of a party, or a mistake in any other respect, and may upon like terms, enlarge the time for answer or demurrer. The court may likewise, upon affidavit showing good cause therefor, after notice to the adverse party, allow, upon such terms as may be just, an amendment to any pleading or proceeding in other particulars, and may, upon like terms, allow an answer to be made after the time limited by this code, and may, upon such terms as may be just, and upon payment of costs, relieve a party, or his legal representatives, from a judgment, order, or other proceeding taken against him through his mistake, inadvertence, surprise, or excusable neglect.

Only remedy after one year is by suit in equity, *State ex Nor. Pac. R. Co. v. Court* 101 W. 144.

Amendment of reply entirely in discretion of court, *Hoffman v Schnatterly* 103 W. 465.

Time runs from judgment on appeal, *In re Shilshole Ave.* 101 W. 136.

Voluntary nonsuit may be withdrawn, *Allbin v. Seattle* 98 W. 275.

Equity suit to vacate judgment prematurely entered, sustained, showing necessary, *Chehalis Coal Co. v. Laisure* 97 W. 422.

Judgment corrected only in manner provided by law, *McCaffrey v. Snapp* 95 W. 202.

Answer may be amended to include counterclaim after remand from supreme court, *Smith Sand & Gravel Co. v. Corbin* 102 W. 306.

Amendment of proceedings and papers §8459; in attachment, §7409; in justice's courts, §9594.

Ignorance of meaning of legal process probably cause for vacation of judgment, *Frieze v. Powell* 79 W. 483.

Motion too late after one year, *State ex rel. Pacific Loan, etc., Co. v. Superior Court* 84 W. 392.

Court allowed amendment on terms and continuance, other party objected to continuance then court allowed amendment without terms, *Stoner v. Fryett* 91 W. 89.

In action for personal injury by boy answer alleging contributory negligence amended to show speed limit of ordinance exceeded, *Barton v. Van Gesen* 91 W. 94.

Defendant may amend to show quantum meruit in action for excessive attorney's fees, *Jensen v. Kohler* 93 W. 8.

This section not authority for new trial for newly discovered evidence, *Denny-Renton Clay Co. v. Sartori* 87 W. 545.

Trial amendment in equity properly allowed when thirty days allowed for further testimony, *Robbins v. Wyman, Partidge & Co.* 75 W. 617.

Plaintiff pleaded realty contract "rescinded" under defendant's general denial court refused trial amendment that contract was "forfeited", held error, *Johnson v. Alexander* 87 W. 570.

On second trial pleading may be amended on different theory, *Smith Sand & Gravel Co. v. Corbin* 89 W. 43.

Claim of surprise not allowed if no motion for continuance, *Fifer v. Lynden Lum. Co.* 90 W. 373.

Amended affidavit and service of wife in garnishment is authorized, *Mottet v. Stafford* 94 W. 572.

Default set aside because defendant had consulted and believed he had employed attorney, *Kain v. Sylvester*, 62 W. 151.

Increasing damage claimed allowed to conform to proof, *Wilson v. Seattle R. & S. R. Co.* 55 W. 656.

Plaintiff alleged conversion and proved breach of contract of carriage, amendment not assumed as made, *Spokane Grain Co. v. Great Nor. Ex. Co.* 55 W. 545.

Evidence in, amendments to pleadings assumed to support findings, *Wheatman v. Kane* 55 W. 226.

Will not be considered as made if introduces new element *McDonnell v. Coeur D'Alene Lum. Co.* 56 W. 495.

Amendments will not be considered as made to general denial when statute requires affirmative answer, *Brown v. Haley* 56 W. 218.

Homestead, order setting aside, is final and vacated only by motion for new trial or petition, *In re McKeever's Estate* 48 W. 429.

Order denying new trial may be vacated—order cannot be vacated, for error of law, *Little Bill v. Dyslin* 51 W. 675.

One trial had it is discretionary to allow amendment requiring retrial, *Gerber v. Gerber* 52 W. 253.

On failure of proof of account stated between copartners amendment should be allowed for accounting, *Maitland v. Purdy* 49 W. 575.

Complaint for injunction considered amended and compromise of claim by city council set aside, *Farnsworth v. Wilbur* 49 W. 416.

Before trial, allowed to increase amount claimed on contract of guaranty, *Schoening v. Maple Valley Lum. Co.* 61 W. 332.

Amendment will not be deemed made if proof outside allegations, *International Dev. Co. v. Clemans* 59 W. 398.

In action to set aside tax title complaint amended substituting "mistake of county treasurer" for "excusable neglect" of plaintiff, *Puget Sound Nat. Bank v. Diswanger* 59 W. 134.

Increasing amounts, considered as made, *Spokane Merchants Ass'n. v. Parry* 60 W. 201.

Evidence admitted outside issues amendments considered as made on appeal, *Reyser v. Western Dry Goods Co.* 53 W. 633.

Mistake of counsel corrected, *National*



Bank Co. v. Kilsheimer & Co. 59 W. 460.

After general denial amendment setting up oral rescission of contract and oral agreement allowed, Cooke v. Cain 35 W. 353.

Agency alleged in former complaint, trial amendment to state same fact proper, McCleary v. Willis 35 W. 670.

Judgment vacated and new trial granted for surprise after telegrams between attorneys—answer, O'Toole v. Phoenix Insurance Co. 39 W. 688.

Complaint amended and filed with judgment, Gritman v. U. S. Fidelity Etc. Co. 41 W. 77.

Default ordered opened because attorneys did not notify opponents of disposal of motion, Douglas v. Badger State Mine 41 W. 266.

Amendment allowed changing cause of action. Van Behren v. Rettkowski 37 W. 247.

Proper to add at trial husband as party plaintiff in action by wife, Davis v. Seattle 37 W. 223.

Complaint considered amended to meet objection to introduction of evidence, Prescott v. Puget Sound Bridge Etc. Co. 31 W. 177, or motion to withdraw case from jury, Johnson v. San Juan Fish Etc. Co. 31 W. 239.

Erroneous ruling sustaining demurrer to complaint, waived by filing amended complaint, Prescott v. Puget Sound Bridge Etc. Co. 31 W. 177.

Amendment of pleading may be allowed after appeal and cause remanded, Jones v. Western Mfg. Co. 32 W. 375.

Filing of counterclaim once waived is properly stricken when attempted at trial, Maney v. Hart 11 W. 67.

Bond conditioned to pay judgment required as a condition that judgment by default be vacated; held, a reasonable condition, Halter v. Spokane Soap Works 12 W. 662.

Diligence is required, Denton v. Merchants Nat. Bank 18 W. 387.

In foreclosure of mortgage plaintiff's attorney agreed to not take personal judgment, held, defendant entitled to vacation

of personal judgment, Hull v. Vining 17 W. 352.

Order vacating judgment for mistake, etc., is not appealable order, Hart Lumber Co. v. Rucker 17 W. 600; but order denying it is appealable. Myers v. Landrum 4 W. 762.

Where a complaint has been amended twice and a third is sought without presenting proposed pleading, it may be rejected, Balch v. Smith 4 W. 497.

Inattention to case by counsel and clients judgment should not be vacated, Myers v. Landrum 4 W. 762.

Prohibition will not lie to prevent Superior Court from amending pleadings from justice's court, State ex rel. Bagley v. Superior Court 3 W. 705.

A judgment will not be vacated on the ground of fraud because decree in foreclosure includes lands released by mortgagee, State ex rel. Etc. v. Superior Court 8 W. 591.

Motion with three days notice is the proper procedure. Spokane & Idaho Lumber Co. v. Stanley 25 W. 653; application by petition is proper, Williams v. Breen, id. 666.

Where plaintiff dismisses his action by mistake, etc., he cannot reinstate it, Chelalis County v. Ellingson 21 W. 638.

Motion may be served on attorney, Stur-giss v. Dart 23 W. 244.

The last amendment taking away five months limitation is valid and applies to prior judgments, Marston v. Humes 3 W. 267.

This section authorizes the vacation of a void judgment at the instance of the party procuring it, Dane v. Daniels 28 W. 155.

If case is tried on issues some of which are not pleaded the parties cannot complain. Shoemaker v. Stimson 16 W. 1.

Burden is on party complaining to show amendment improperly allowed even on oral motion, Daly v. Everett P. & P. Co. 31 W. 252.

Court has no authority to vacate erroneous order, Coyle v. Seattle Electric Co. 31 W. 181.

Cited 86 W. 282.

**§8337. Amendment to Be Made By New Pleading. §110.—110.** When any pleading or proceeding is amended before trial, mere clerical errors excepted, it shall be done by filing a new pleading, to be called the amended complaint, or otherwise, as the case may be. Such amended pleading shall be complete in itself, without reference to the original, or any preceding amended one.

Party stands on amended pleading, reference cannot be had to prior pleadings, Puget Sound Tr. L. & P. Co. 103 W. 41.

Refusal of court to allow third amended complaint held proper, Harris v. Cowles 38 W. 331.

After complaint amended only defendant can take advantage of the original, Sengfelder v. Hill 16 W. 355.

When amendment ordered by court, service not necessary, Williams v. Miller, 1 W. T. 88.

**§8338. Pleadings May Be Stricken—Pleading Over Terms. §111.—111.** Any pleading not duly verified and subscribed, may, on motion of the adverse party, be stricken out of the case. When any pleading contains more than one cause of action or defense, if the same be not pleaded separately, such pleading may, on motion of the adverse party, be stricken out of the case. When a motion to strike out is allowed, the court may,

Offer to amend must show what proposed amendment is, Newberg v. Farmer, 1 W. T. 182.

Amendment by interlineation allowed, Newman v. Buzard, 24 W. 255.

Complaint to foreclose logger's lien may be amended without permission by adding new parties, Cross v. Dore, 20 W. 121.

Court may strike out pleading refiled after being held demurrable and give judgment on pleadings, Noyes v. Loughhead, 9 W. 325; see Hays v. Peavy, 43 W. 163.

upon such terms as may be proper, allow the party to file an amended pleading; or, if the motion be disallowed, and it appear to have been made in good faith, the court may, upon like terms, allow the party to plead over.

Pleadings stricken entirely, §8362; in part, §8383.

Causes of action may be united, §8380.

Verification of pleadings, §8383.

**§8339. Name of Defendant Not Known.** §112.—112. When the plaintiff shall be ignorant of the name of the defendant, it shall be so stated in his pleading, and such defendant may be designated in any pleading or proceeding by any name, and when his true name shall be discovered, the pleading or proceeding may be amended accordingly.

Publication to unknown persons, §8442; in eminent domain, §7648.

**§8340. Errors to Be Disregarded at Trial and on Appeal.** §113.—113. The court shall, in every stage of an action, disregard any error or defect in pleadings or proceedings which shall not affect the substantial rights of the adverse party, and no judgment shall be reversed or affected by reason of such error or defect.

Failure by guardian of insane person to plead affirmative defenses in action to quiet title is technical and disregarded, *Whitaker v. Ellis* 102 W. 43.

Failure to designate cross-complaint or counterclaim as such not fatal, *Zindorf v. Tillotson* 83 W. 472.

Failure to make findings supreme court will direct that they be made and judgment entered, *Colvin v. Clark* 83 W. 376.

Rejection of photograph of place of injury, the same being described by witnesses, disregarded, *Kelly v. Spokane* 83 W. 55.

Pleadings considered amended in Supreme court to conform to proof, *Klein v. Phelps Lum. Co.* 75 W. 500.

Amendment deemed made, *Morrill v. Title Guar. & S. Co.* 94 W. 258.

Answer amendable will be considered amended after proof taken, *Kelly v. Lum* 75 W. 135.

Allegation of time of performance of contract due in fall of 1911 with proof of modification to spring 1912, held pleadings amended to conform, *Bridgeport Milling Co. v. Columbia & O. S. Co.* 85 W. 336.

Evidence in, no variance, pleadings deemed amended, *Cremidas v. Dallas* 91 W. 441.

Pleadings are as broad as evidence introduced, *Gold Ridge, etc., Co. v. Rice* 77 W. 384.

Title of complaint under "red light law" defective cured by recitals, *State v. Knutson* 81 W. 47.

Judgment on the pleadings, the complaint not stating cause of action, amendment not assumed as made, *Merritt v. Meisenheimer* 84 W. 174.

After execution and sale creditor made direct attack on deed failing to allege or prove fraud, there can be no amendment, *Crandall v. Lee* 89 W. 115.

Plaintiff did not allege directly that mis-

**§8341. Supplementary Pleadings.** §114.—114. The court may, on motion, allow supplemental pleadings, showing facts which occurred after the former pleadings were filed.

Proper to allow defendant to withdraw an answer and demur on the ground that the complaint was not filed within time under the statute of limitations, where the objection was not available at the time the issue was made up, *Petree v. Washington Water Co.* 64 W. 636.

Pleading stricken because not verified with leave to plead over second pleading in time, though beyond limitation, *In re Sullivan's Estate* 40 W. 202.

representations preceded contract, complaint sufficient, *Bell v. Jovita Heights Co.*, 71 W. 7.

Supreme court will regard pleadings amended to conform to proof admitted without objection, *Godfrey v. Olson*, 68 W. 59.

Superior court shall hear merits, §7336.

Supreme Court will not reverse case because facts were defectively stated, *Green v. Tidball* 26 W. 338.

Where venue is jurisdictional, failure to allege is harmless where sheriff's return shows jurisdiction, *Stiles v. James*, 2 W. T. 194; see *Eakin v. McCraith*, 2 W. T. 112.

Testing complaint by motion instead of demurrer harmless when motion treated as demurrer, *Bethel v. Robinson*, 4 W. 446; *Seal v. Cameron*, 24 W. 62.

Erroneous pleadings on demurrers waived if cured by subsequent proceedings; *Asplund v. Matson*, 15 W. 328; *Moran Co. v. N. P. Ry.*, 19 W. 266; or by filing amended pleadings, *Maris v. Clevenger*, 29 W. 395; *Hays v. Peavy*, 43 W. 163; but not after exception and trial, *Jones v. St. Paul etc. Ry.*, 16 W. 25; *Scott v. Hallock* 16 W. 439.

Error in rulings on motions harmless if cured by pleadings or further action, *Johnson v. Seattle Elec. Co.*, 39 W. 211; *Federal etc. Co. v. Hock*, 42 W. 668; but see *Pettygrose v. Rothschild*, 2 W. 6.

Party is bound by his evidence upon an issue whether or not it was made by pleadings, *Sherman v. Sweeney*, 29 W. 321; or where evidence not objected to, *Bruce v. Foley*, 18 W. 96.

Defects, if not prejudicial, may be treated as cured by judgment, *Gallamore v. Olympia*, 34 W. 379; *Ellsworth v. Layton*, 37 W. 340; *Carstens v. Milo*, 40 W. 335.

Cited 83 W. 30.

Cited 88 W. 610.

Facts prior to amended complaint allowed—continuance, *Edwards v. Seattle, R. & S. R. Co.*, 62 W. 77.

Damages after commencement of action properly pleaded by supplemental complaint, *International Dev. Co. v. Clemans* 59 W. 398.



Supplemental complaint filed as amended complaint good after trial, *Johnson v. Pacific Bank etc. Co.* 59 W. 58.

Supplemental pleading will not cure premature action, *Gunby v. Ingram* 57 W. 97.

Supplemental answer to show settlement, *McRea v. Warehime* 49 W. 194.

Supplemental complaint after trial and decision properly denied, *Harsin v. Oman* 59 W. 693.

Supplemental complaint proper to show acts constituting breach of contract, *Hodges v. Price* 38 W. 1.

Facts occurring after filing of pleading taken advantage of only by supplemental pleading, *Bard v. Kleeb* 1 W. 375.

Plaintiff cannot file supplemental pleading claiming attorney's fees in an action on promissory note he had assigned, *Davis*

*v. Erickson* 3 W. 654. After forty days supplemental pleading cannot be filed, twenty days having been granted, *id.* Judgment on supplemental pleadings is bad, no notice having been given of the filing, *Powell v. Nolan* 27 W. 321.

Injunction sought to protect property attached when no judgment to which attached property is to be applied supplemental pleading should be allowed to show rendition of judgment, *Meacham Arms. Co. v. Swarts* 2 W. T. 412.

Purchaser of cause of action pendente lite can appear only by supplemental pleading or consent of other parties, *Powell v. Nolan* 27 W. 318.

Allowance of supplemental pleadings discretionary, *McDaniels v. Gowey* 30 W. 412.

## PLEADINGS—FORM OF.

Issues of law and fact defined §8473.

**§8342. All Common Law Forms Abolished.** §73.—73. All the forms of pleadings heretofore existing in civil actions inconsistent with the provisions of this act, are abolished, and hereafter the forms of pleading and the rule by which the sufficiency of the pleadings is to be determined, shall be as herein prescribed.

One form of actions, §8253; joinder of causes, §8380; parties, §8270.

Denials in doubt remedy is motion to make more definite and certain, *O'Brien v. Seattle Ice Co.* 43 W. 217.

Complaint for money had and received is not supported by proof that plaintiff had paid on contract for land and for sufficient cause rescinded the same, *Distler v. Dabney* 3 W. 200.

The logic of pleadings stated—complaint for goods sold and delivered is not subject to demurrer, but may be subject to motion; *Renton v. St. Louis* 1 W. T. 215.

An answer alleging that "each and every

of four separate causes of action set forth in the complaint did not accrue within six years" contains a negative pregnant, *Gammmon v. Dyke* 2 W. T. 266.

Complaint for a specific amount denied by an answer specifying such specific amount is a negative pregnant, *Dillon v. Spokane County* 3 W. T. 498.

Negative pregnant has been abrogated by our statute, *Nettleton v. Howe* 81 W. 32.

Cited for liberal construction to defeat removal of cause to federal court, *Beckwith v. Chicago, M. & St. P. Ry. Co.* 223 Fed. 858.

**§8343. Form of Pleadings.** §74.—74. The only pleadings on the part of the plaintiff shall be:

1. The complaint. 2. The demurrer. 3. The reply. And on the part of the defendant: 1. The demurrer. 2. The answer.

Rules of superior courts §8431a.

**§8344. Complaint.** §75.—75. The first pleading on the part of the plaintiff shall be the complaint.

**§8345. Contents of Complaint.** §76. The complaint shall contain:

1. The title of cause, specifying the name of the court, the name of the county in which the action is brought, and the name of the parties to the action, plaintiff and defendant.

2. A plain and concise statement of facts constituting the cause of action, without unnecessary repetition.

3. A demand for the relief which plaintiff claims; if the recovery of money or damages be demanded, the amount thereof shall be stated. L. 91 106.

Pleadings in various causes of action, §8368; foreclosure of mortgage, §8201; replevin, §8421; realty actions, §7517; material allegation defined, §8382.

Theory of trial not acquiesced in amendment not considered made, *Eckhart v. Peterson* 94 W. 379.

Complaint sustained though damages not stated, *Loutzenhiser v. Peck* 89 W. 435.

A direct allegation of fact may be made "upon information and belief"—if the facts

have been stated positively the allegation "upon information and belief" will be held surplusage, *Warburton v. Ralph* 9 W. 537.

Reference made in one cause of action to another is not reached by demurrer, *Sly v. Mining Co.* 28 W. 485.

Though prayer for special relief defective proper relief will be given under general prayer, *McKay v. Smith* 27 W. 442; *Dormitzer v. German Sav. & L. Soc.* 23 W. 132.

If objection that complaint does not con-

stitute cause of action was not raised below, pleading will be liberally construed in Supreme Court, *Island County v. Babcock* 17 W. 438.

A complaint in equity based on facts that justify an accounting, injunctive relief or the declaration of a trust, is good—election, *Yarwood v. Johnson* 29 W. 643.

Though complaint does not show defendants have any interest they may insist that it shall state a cause of action, *Gleason v. Hawkins* 32 W. 464.

Objection that complaint does not state cause of action can not be taken by motion to dismiss, *Wilkeson Coal Etc. Co. v. Driver* 9 W. 177.

Where facts entitle plaintiff to relief demurrer will not lie, though action misnamed and relief misconceived, *Watson v. Glover* 21 W. 677; *Damon v. Leque*, 14 W. 253; *Dormitzer v. German Sav. & L. Soc.*, 23 W. 132; *Yarwood v. Johnson*, 29 W. 643; *Brown v. Calloway* 34 W. 175; *McKay v. Calderwood* 37 W. 194; *Lawrence v. Halverson* 41 W. 534.

Absence of facts constituting cause are never waived and must be supplied, *Tolmie v. Dean* 1 W. T. 47.

Complaint must allege corporate existence, *Tolmie v. Dean* 1 W. T. 47; defect may be waived by answering, *id.*

Conclusions of law must not be pleaded, *Parrish v. Reed* 2 W. 491; *Ritchie v. Carpenter* 2 W. 512; *Baker-Boyer Nat. Bank v. Hughson*, 5 W. 100; *Lake v. Steinbach*, 5 W. 659; *State ex rel Whitney v. Frairs*, 10 W. 348; *Bay View Brg. Co. v. Grubb* 24 W. 163; *Carlson v. County Com'rs.* 38 W. 616.

But the allegations of a fact will not be affected by addition of conclusions, *Brummett v. Campbell* 32 W. 358.

A conclusion of law is not admitted by demurrer, *MacMartin v. Stevens* 37 W. 616; but see, *Mason v. McGee* 15 W. 272.

Assignment must be pleaded to hold assignee as such, *Quinby v. Slipper* 7 W. 475.

Failure to allege corporate character of defendant cured by its counter-claim, *Frost v. Ainslee L. Co.* 3 W. 241; *Sengfelder v. Mut. L. Ins. Co.* 5 W. 121.

Code and common law pleading compared, *Renton v. Peter St. Louis* 1 W. T. 215.

Complaint cannot be amended so as to substitute entirely new plaintiffs, *Liebman v. McGraw* 3 W. 520.

Title reading "A. B., Receiver," mere description personal *Basele v. Grant St. Elec. R. Co.* 16 W. 602.

Foreign statute must be pleaded to be available, *Lagomarsiono v. Pacific Alaska Nav. Co.* 100 W. 105.

#### Requisites in Pleading Facts.

Complaint alleging that defendants agreed to lighter a cargo of lumber from a vessel and deliver it to the plaintiff, that defendants took possession of the lumber

and delivered a portion thereof but neglected and refused to deliver the remainder, will allow the recovery of damages that naturally flow from failure to deliver but not for conversion or loss of the lumber, *Carroll v. Caine* 27 W. 402.

Must admit of intelligent and direct answer, *Distler v. Dabney* 3 W. 200; *P. S. I. Co. v. Worthington* 2 W. T. 472; *First Nat. Bank v. Young* 20 W. 337; *Grant v. Walsh* 36 W. 190.

Evidentiary facts and inferences considered on demurrer, *Chambers v. Hoover* 3 W. T. 107; *Issacs v. Holland* 4 W. 54.

Name of action immaterial, *Casey v. Oakes* 17 W. 409; *Dunlap v. Rauch* 24 W. 620.

Defenses need not be anticipated, *Johnson v. Bellingham Bay Imp. Co.* 13 W. 455; *Randall v. Hoquiam* 30 W. 435; *Malloy v. Benway* 34 W. 315; *State v. Davis* 43 W. 116.

Written instrument may be attached as exhibit, and referred to sufficiently to put defendant on inquiry, *Hays v. Dennis* 11 W. 360.

Article of incorporation may be pleaded in substance and effect, *Seal v. Cameron* 24 W. 62.

In absence of demurrer pleading liberally construed upon attack after judgment, *Town of Elma v. Carney* 4 W. 418; *Montesano v. Blair* 12 W. 188; *Mosher v. Bruhn* 15 W. 332; *Johnson v. Leonhard* 1 W. 564; *Lyen v. Bond* 3 W. T. 407; and sufficiency may not be first attacked on appeal, *U. S. v. Small* 3 W. T. 478.

Complaint stating two causes of action together, one will not be stricken out, *Richardson v. Carbon Hill Coal Co.* 10 W. 648, but where one cause held insufficient on appeal, evidence thereof not admissible on retrial, *id.*

Refusal of court to compel plaintiff to elect between two causes not prejudicial error if plaintiff elects at opening of trial, *Van Hook v. Burns* 10 W. 22.

Where facts relate to single transaction as basis for one cause of action, immaterial if they show liability in both tort and contract *Barto v. Nix* 15 W. 563.

Complaint not demurred to sufficient if any recovery can be predicated, *Blumenthal v. Pac. Meat Co.* 12 W. 331.

If facts show fraud, specific allegation thereof not necessary, *Andrews v. King Co.* 1 W. 46.

Laws of another state must be pleaded and proven, *Daniel v. Pressler* 3 W. 636; *Gunderson v. Gunderson* 25 W. 459; *In re Stewart's Estate* 26 W. 32; *Daniel v. Gold Hill M. Co.* 28 W. 411; *Lowry v. Moore* 16 W. 476; for an exception, see, *Cunningham v. Spokane H. etc. Co.* 20 W. 450.

Non-payment must be pleaded affirmatively, *Bethel v. Robinson* 4 W. 446; *Nat. Bank v. Western I. & S. Co.* 14 W. 162.

Special damage not alleged cannot be included in judgment, *Sheehan v. Levy* 1 W. 149; see, 148 U. S. 345; *Kaufman v. Tacoma etc. Ry.* 11 W. 632.

Defects not demurrable reached by mo-



tion, *Renton v. Peter St. Louis* 1 W. T. 215.

If any part of complaint good, it is good on general demurrer, *McCartney v. Glassford* 1 W. 579.

Amended complaint waives error in ruling on original, *Bell v. Wandy* 4 W. 743.

Evidence not objected to covering defects in complaint, cure them, *Livesley v. O'Brien* 3 W. 546; *Waldron v. Home M. L. Ins. Co.* 9 W. 534.

#### On Contract For Payment of Money.

Where notes assigned by payee as security for loan, complaint by payee against payor alleging refusal of bank to sue, insufficient, *Davis v. Erickson* 3 W. 654.

Allegation that representations were false and fraudulent mere expression of opinion, *Nat. Bank v. Hughson* 5 W. 100.

Complaint on note alleging endorsement and that plaintiff is owner, sufficient, *Osborne & Co. v. Stevens* 15 W. 478.

Assignee of note was to collect and pay indebtedness to itself and others, complaint to recover value thereof sufficient alleging sale of note, conversion of proceeds, and refusal to refund excess, *Howard v. Seattle Nat. Bank* 10 W. 280.

Complaint on city warrant signed by "acting mayor" need not allege proceedings appointing acting mayor, *Stephens v. Spokane* 11 W. 41.

Complaint on contract by and against other parties sufficient where assignments of interest alleged, *Van Horne v. Watrous* 10 W. 525.

Where obligee on bond incorrectly described, complaint alleging execution and delivery to plaintiff sufficient, *P. I. Pub. Co. v. Harris* 11 W. 500.

Complaint alleging execution by principal on contract signed by attorney-in-fact, good, *Richmond v. Voorhees* 10 W. 316.

Complaint for unpaid stock subscription need not allege subscription of entire capital stock, *McKay v. Elwood* 12 W. 579.

Complaint for goods sold and delivered will not support action on account stated, *Wilson v. Waldron* 12 W. 149.

Complaint admits extension of time for payment, plaintiff cannot show extension void for want of consideration, *Rockford Shoe Co. v. Jacob* 6 W. 421.

Action for money had and received cannot be maintained for breach of contract, although contract invalid, *Dietz v. Winehill* 6 W. 109.

Complaint for price of logs alleging defendant took possession good, *Tingley v. Fairhaven L. Co.* 9 W. 34; see, *Runyan v. Russell* 3 W. 665.

Complaint for sum due and further sum to become due, good as to sum due, *Rice v. Yakima etc. Ry.* 4 W. 724.

Complaint for commission failing to allege communication of facts to defendant and that defendant consummated sale or refused to do so after notice, insufficient, *Penter v. Straight* 1 W. 365.

Complaint not alleging that work was done by plaintiff or that he had interest in concern that did the work, insufficient, *Rathbun v. Thurston Co.* 8 W. 238.

Complaint alleges an "arrangement" between parties, word construed as agreement, *Boyle v. G. N. Ry.* 13 W. 383.

#### For Damages.

Against railroads, averments that firm was constructing part of its roadbed and that plaintiff was working for such firm sufficient to show firm was independent contractor, *Boyle v. G. N. Ry.* 15 W. 383.

Complaint alleging injury by collapse of trap door, negligence of defendant in not properly securing door, and no fault in plaintiff, sufficient, *Washington v. Spokane St. Ry.* 13 W. 9.

Allegation of necessary medical treatment admits evidence thereof without being pleaded as a distinct cause of action, *N. P. Ry. v. Hess* 2 W. 383.

Collision with street-car, see, *Redford v. Spokane St. Ry.* 9 W. 55.

For injuries received from private party on city street not necessary to allege incorporation of city *Carroll v. Centralia Water Co.* 5 W. 613.

Action against sheriff for wrongful seizure of mortgaged goods, need not allege value when seized where no special damage claimed, *Sheehan v. Levy* 1 W. 149; *id.* 3 W. 420.

For false representations, see, *Gates v. Moldstad* 14 W. 419.

#### Insurance.

Proof of loss of safe admitted under allegation of loss of "fixtures," *Pencil v. Home Ins. Co.* 3 W. 485.

Failure to allege policy, proof of loss, ownership and value of property fatal, *Emigh v. State Ins. Co.* 3 W. 122.

Omission of allegation of insurable interest cured by admission of evidence without objection, *Waldron v. Home Mut. Ins. Co.* 9 W. 634.

#### Malicious Prosecution.

Allegation "procured arrest on false charge .... maliciously, and without probable cause" good, *Jones v. Jenkins* 3 W. 17.

Facts necessary in complaint for malicious prosecution, *Ferguson v. Tobey* 1 W. T. 276.

#### Nuisance.

For conducting gambling house, failure to allege particular house and wherein a nuisance fatal, *N. P. Ry. v. Whalen* 3 W. T. 452; see, *Grantham v. Gilson* 41 W. 125.

#### Land Contracts—Specific Performance.

Complaint to enforce conveyance not demurrable where contract signed by agent and agency not mentioned, *Wooding v. Crain* 10 W. 35; see, *Boston Clothing Co. v. Solberg* 28 W. 262.

Defective contract cured by allegation of mistake and intention of parties *Vall v. Tillman* 2 W. 476; see, also, for sufficient complaint, *Sayward v. Gardner* 5 W. 247; insufficient, *O'Connor v. Jackson* 23 W. 224.

Under contract to trade land for chattels, action for breach is assumpsit for chattels without reference to contract, *Ankeny v.*

Clark 1 W. 550; contra, see Dissler v. Dabney 3 W. 200; Osten v. Winehill 10 W. 333.

Complaint for purchase price alleging deed to A at request of B and C, the real purchasers, deferred payments secured by mortgage from A and bond from B and C, good against all three, Hanna v. Savage 7 W. 414.

Allegation of ownership at date of contract immaterial if able to deliver at time of performance, Kleeb v. Bard 7 W. 41.

Grantors "not seized in fee or possessed of the right to sell and convey" not sufficient allegation of defective title, Decker v. Schultze 11 W. 47.

Complaint under donation act not showing affidavit required insufficient, Schockley v. Brown 1 W. T. 463.

Seizin of ancestor at death sufficient allegation of title, Balch v. Smith 4 W. 497; see, also, Freytag v. N. P. Ry. 1 W. 214; Hankle v. Denison 34 W. 51.

Allegation of tax title that vendee is willing to accept sufficient, Newell v. Lamping 45 W. 304.

#### — Fraudulent Conveyance.

Two vendors, allegation of misrepresentation by one insufficient, Webb v. Stephenson 11 W. 342.

Allegation that "the said execution had been returned by the sheriff wholly unsatisfied and that the defendant has no other property out of which the plaintiff could make said judgment" sufficient to show lack of other property at time of conveyance, Cook v. Tibbals 12 W. 207; see, Allen v. Chambers 18 W. 341; Reed v. Loney 22 W. 433; Bates v. Drake 28 W. 447; Rohrer v. Snyder 29 W. 199; Murray v. Shoudy 13 W. 33; O'Leary v. Duvall 10 W. 666.

Complaint must show benefit from misrepresentation, Kennah v. Huston 15 W. 275.

Where creditor asks equitable relief, insufficiency of relief at law must be alleged, Thompson v. Caton 3 W. T. 31.

**§8346. Demurrer to Complaint, Grounds Of.** §77. The defendant may demur to the complaint when it shall appear upon the face thereof either,—

1. That the court has no jurisdiction of the person of the defendant or of the subject matter of the action.
2. That the plaintiff has no legal capacity to sue; or
3. That there is another action pending between the same parties for the same cause; or
4. That there is a defect of parties, plaintiff or defendant; or
5. That several causes of action have been improperly united;
6. That the complaint does not state facts sufficient to constitute a cause of action;

7. That the action has not been commenced within the time limited by law. L. '91 106

#### Demurrer Generally.

Motions, §8077; to strike pleadings, §§8362, 8370, 8338.

Pleading statute of limitations, §8160.

Two inconsistent actions, former abandoned, Rose v. Rundall 86 W. 422.

Defect of parties cannot be raised for the first time in the supreme court, Lamb v. Connor 84 W. 121.

Motion to quash service held a demurrer and general appearance, Mahr v. Union Pac. R. Co. 140 Fed. 921.

leged, Thompson v. Caton 3 W. T. 31.

#### Miscellaneous.

To make mortgage deficiency judgment prior lien on other property, insolvency of debtor must be alleged, Howard v. Devol 15 W. 270.

Independent action to set aside judgment does not lie when action based on error in setting aside verdict, Davis v. Fields 9 W. 78.

Complaint in interpleader, Howard v. Devol 15 W. 270.

Under general allegation of negligence facts showing negligence may be proven, Collett v. N. P. Ry. Co. 23 W. 600.

#### Demand—Amount

Reply cannot enlarge claim of complaint, Bell v. Waudby 4 W. 743.

Complaint not demurrable because prayer is for amount larger than allegations warrant, Howard v. Seattle Nat. Bank 10 W. 280.

Nominal damages presumed when complaint states contract and breach, Johnson v. Cook 24 W. 474.

Prayer for relief unimportant in determining rights of parties or jurisdiction of court, Howard v. Seattle Nat. Bank 10 W. 280; Smith v. Allen 18 W. 1; except when there is no answer, Bank of Cal. v. Dyer 14 W. 279.

In action on contract to pay value of wharf five years after erection, an allegation that it cost a certain sum, "which was its value in the contemplation of the parties," insufficient, Hart Lum. Co. v. Everett Land Co. 20 W. 71.

Allegation of damages and prayer for judgment thereon sufficient allegation of non-payment, Belt v. Washington W. P. Co. 24 W. 387.

In action for specific performance an alternative prayer for damages does not deprive court of equity jurisdiction, Konnerup v. Frandsen 8 W. 551; distinguishing Morgan v. Bell 3 W. 554.

Demurrer waived if proof not objected to, Reynolds v. Dickson 48 W. 407.

Sustained as to one ground will be presumed overruled as to the other, Sequim Bay etc. Co. v. Bugge 49 W. 127.

Demurrer as denial of facts properly overruled, Schell v. Walla Walla 44 W. 43.

Ore tenus at trial will not reach insufficiency of complaint, Snohomish River Boom Co. v. G. N. R. Co. 57 W. 693.

When objection to complaint cannot be taken by objection to testimony on trial,



Walsh v. Meyer 40 W. 650.

A general demurrer does not raise the question of the statute of limitations, Joergensen v. Joergensen 28 W. 477; Peterson v. Dillon 27 W. 86.

General demurrer will not raise question of failure to allege incorporation of defendant, Sly v. Mining Co. 28 W. 485.

Facts of affidavit for vacation of judgment admitted by demurrer, Dane v. Daniel 28 W. 155.

Motion may be treated as a demurrer, Seal v. Cameron 24 W. 62.

Complaint in quo warranto demanding by what warrant defendant enjoys certain franchises, answer that it is no concern of the State or its attorney general is in effect a demurrer, State ex rel. Attorney General v. Seattle Gas Co. 28 W. 488.

Action on injunction bond and for malice in suing out injunction held improperly united, Willey v. Nichols 18 W. 528.

But one demurrer can be filed, Burrows v. McCalley 17 W. 269.

In action for injunction against loss of sales of school text books, demurrer to answer which negatives loss of sales admits the answer, and is ground for denying the injunction, Rand, McNally & Co. v. Hartman 29 W. 591.

Demurrer is for purpose of raising substantial issues of law and not to cure incidental defects, Chambers v. Hoover 3 W. T. 107.

Facts having been adjudicated complaint failed to state a cause, Wingard v. Jameson 2 W. T. 402.

Filing of amended complaint does not waive exceptions to sustaining demurrer, Wood v. Mastick 2 W. T. 64.

Common law rules on demurrer do not apply, Renton v. St. Louis 1 W. T. 215.

Demurrer does not lie to single paragraph, Lowman v. West 8 W. 355; but see, Lafleur v. Douglas 1 W. T. 185.

Demurrer admits all facts properly pleaded, Barnett v. Ashmore 5 W. 163; Soule v. Seattle 6 W. 315; Brookman v. State Ins. Co. 15 W. 29; but see, Olympia Waterworks v. Gelbach 16 W. 482; Franklin Sav. Bank v. Moran 29 W. 200.

Demurrer generally, Renton v. St. Louis 1 W. T. 215.

Appearance and filing demurrer cures defective service, Williams v. Miller 1 W. T. 88.

Where court orders amendment of complaint it amounts to sustaining demurrer, Williams v. Miller 1 W. T. 88.

Conclusions of law not ground for demurrer, Isaacs v. Holland 4 W. 54; Harris v. Harrison 23 W. 779.

Demurrer waived by answering to the merits, Budlong v. Budlong 45 W. 615.

#### Improper Joinder of Causes.

Joinder of mandamus and injunction not fatal where ground for injunction but not mandamus shown, Times Pub. Co. v. Everett 9 W. 518.

Failure of court to pass upon demurrer to improper joinder not cured by sustaining as to defective paragraph, Penter v. Straight 1 W. 365.

Joinder of maker of note and verbal guarantor good, Gilmore v. Shookum Box

Factory 20 W. 703.

Bill of particulars showing two causes does not make complaint demurrable, Dudley v. Duval 29 W. 522.

#### Defect of Parties.

Defect of Parties waived if not raised on trial, Budlong v. Budlong 48 W. 615.

Want of capacity to sue appearing is waived by failure to demur on that ground, Hale v. Crown Columbia P. & P. Co. 56 W. 236.

Defect of parties must be raised in time or there will be waiver, Criswell v. School District 34 W. 420.

Defect of parties cannot be urged as ground for objection to testimony, Dickman v. Spokane 26 W. 292.

Defect of parties defendant must be raised before trial, Bignold v. Carr 24 W. 413.

Several persons holding by different conveyances cannot join to remove cloud common to all and for injunctive relief, Utterback v. Meeker 16 W. 185.

Defect of parties defendant waived by making defense without them, Barton v. Sealand 2 W. T. 86.

#### Another Action Pending.

Former action by father as next friend cannot be interposed to action by father as guardian ad litem, Harris v. Fidalgo Mill Co. 38 W. 169.

Demurrer because another action pending may be interposed to a counterclaim—pendency of an action in rem in a United States court is not available as ground of demurrer, Caine v. S. & N. Ry. Co. 12 W. 596.

In case of two actions involving the same parties and subject matter, the court may stay proceedings in one until a judgment in the other shall have been paid, Schwede v. Hemrich 29 W. 124.

Pendency of another action must appear in complaint, Jackson v. McAuley 13 W. 298; Lowman v. West 8 W. 355.

Complaint shows judgment invalidating warrants sued on demurrable, Seattle Nat. Bank v. School Dist. 20 W. 368.

#### Insufficiency of Facts Pleaded.

Demurrer on the ground that the complaint does not state a cause of action does not raise question of the legal capacity of the plaintiff to sue, Birmingham v. Cheatham 19 W. 657.

Demurrer to facts necessary to constitute cause of action will not reach misjoinder, Marvin v. Yates 26 W. 50.

Demurrer for want of facts waived cannot be raised on appeal, Hardin v. Mullin 16 W. 647.

Where facts constitute cause of action, but are not sufficiently specific, remedy is by motion, Pares v. Gleason 14 W. 657; and unless attacked will be held good, Bell v. Waudby 4 W. 743; and see, Howard v. Seattle Nat. Bank 10 W. 280; Duryce v. Frairs 18 W. 55; Gehres v. Orlowski 36 W. 156; Wilkeson Coal Co. v. Driver 9 W. 177.

Demurrer waived, complaint cannot be attacked on appeal, Mosher v. Bruhn 15 W.

332.

Want of definiteness in answer, remedy by motion, *Schaad v. Robinson* 50 W. 233

Complaint on contract against corporation without alleging corporate existence, demurrable, *Tolmie v. Dean* 1 W. T. 46.

Complaint for death of employee showing that peril could have easily been seen

and avoided demurrable, *Bullivant v. Spokane* 14 W. 577.

Demurrer for want of facts does not raise question of statute of limitations, *Board etc. v. First Pres. Church* 19 W. 455; *George v. Butler* 26 W. 456; *Joergenson v. Joergenson* 28 W. 477.

Cited 75 W. 291.

**§8347. Demurrer May Be General or Special.** §78.—78. The demurrer may specify the grounds of objection in the statutory language of section seventy-seven [§8346], or the grounds may be distinctly specified; it may be taken to the whole complaint; or to any one of the alleged causes of action stated therein.

Improper joinder of causes of action reached by special not general demurrer, *Ames v. Kinnear* 42 W. 80.

Special demurrer or answer for defect of parties, *Buckles v. Reynolds* 58 W. 485. Cited 75 W. 291.

**§8348. Grounds of Demurrer Not on Face of Complaint Raised By Answer.** §79.—79. When any of the matters enumerated in section seventy-seven [§8346] do not appear upon the face of the complaint, the objection may be taken by answer.

Objection for non-joinder of wife must be made or it is waived, *State ex rel. Abraham v. Terry* 74 W. 208.

Defect of parties can only be raised by demurrer or answer and if not taken before trial is deemed waived, *Harrington v. Mil-*

*ler* 4 W. 810.

Timely objection must be made to answer setting up defense formerly raised by demurrer, *Shephard v. Gove* 26 W. 452. Cited 75 W. 291.

**§8349. Complaint If Amended Must Be Served.** §80.—80. If the complaint be amended, a copy thereof shall be served on the defendant or his attorney, and the defendant shall answer the same within such time as may be prescribed by the court; and if he omit to do so, the plaintiff may proceed to obtain judgment as in other cases of failure to answer.

Default entered after motion for change of venue is error, *Richman v. Wenaha Co.* 74 W. 370.

Judgment by default, §8109.

Amendment of pleading alleging specifically claim of homestead is not depart-

ure when original pleading alleged homestead, *Ross v. Howard* 25 W. 1.

Party cannot depend on former but must stand on amended pleading—evidence, *Goldwater v. Burnside* 22 W. 215.

**§8350. When Defects Waived If Question Not Raised.** §81.—81. If no objection be taken either by demurrer or answer, the defendant shall be deemed to have waived the same, excepting always, the objection that the court has no jurisdiction, or that the complaint does not state facts sufficient to constitute a cause of action, which objection can be made at any stage of the proceedings either in the superior or supreme court.

Amendment of complaint to constitute a cause of action considered as made on appeal, *Messiah v. National Council, Etc.* 102 W. 143.

Pleading over does not waive demurrer, *Benjamin v. Ernst* 83 W. 59.

If admitted evidence makes case, demurrer unavailing, *Rea v. Eslick* 87 W. 125.

Exception not necessary to order overruling demurrer to jurisdiction—injury to bridge in admiralty jurisdiction, *West v. Martin* 47 W. 417.

Demurrer waived cannot be insisted on on appeal, though complaint insufficient, *Watson v. Town of Kent* 35 W. 21; *Healy v. King County* 37 W. 184.

Leave to sue a receiver is jurisdictional and cannot be waived by him, *Brown v. Rauch* 1 W. 497; overruled in *High v. Shelton S. W. Ry.* 20 W. 16.

Where no objection was made in the court below to defect in the parties plaintiff the question cannot be raised in the Supreme Court, *Ralph v. Lomer* 3 W. 401; *Hannegan v. Roth* 12 W. 695.

Demurrer because complaint does not state a cause of action once waived cannot be raised again, *Mosher v. Bruhn*, 15 W.

332.

Defense of the statute of limitations if not raised in the court below cannot be raised on appeal, *Herrick v. Niesz* 16 W. 74.

Judgment by default is appealable to determine whether the complaint states facts sufficient to constitute a cause of action, *Rhode Island Etc. Co. v. Spokane* 10 W. 616.

After answer demurrer not proper remedy, *Renton v. St. Louis* 1 W. T. 215; *Weatherwax Lum. Co. v. Ray* 38 W. 545.

Failure to demur to insufficient facts not waiver, *Lyen v. Bond* 3 W. T. 407; but if defendant goes to trial without objection complaint construed against him, *id.*

Objection after verdict, pleadings construed in favor of pleader, *Coats v. W. C. F. & M. I. Co.* 4 W. 375.

Waiver of demurrer to insufficient facts by filing answer, see, *Jones v. St. Paul etc. Ry.* 16 W. 25; *O'Toole v. Faulkner* 29 W. 544; *State ex rel. Atty. Gen. v. Gas Co.* 28 W. 488; *Wappenstein v. Aberdeen* 39 W. 189.

Objections considered waived if facts justify recovery on any theory, *Blumenthal*



*v. Pac. Meat Co.* 12 W. 331; *State ex rel. Abernethy v. Moss* 13 W. 42; *Wappenstein v. Aberdeen* 39 W. 189; *County v. Babcock* 17 W. 438.

Demurrer to insufficient facts overruled, objections to evidence may be sustained, *O'Day v. Ambaum* 47 W. 684.

But if no demurrer or objection to evidence, non-suit properly denied, *Jenkins v. Equitable Ind. Ass'n.* 18 W. 514.

After compelling additional party to be made plaintiff, demurrer to sufficiency of facts as to him not allowed, *Harrington v. Gordon* 42 W. 692; *Gleason v. Tacoma Hotel Co.* 16 W. 412.

Judgment on pleadings, *Townsend v. Price* 19 W. 415; *Ach v. Carter* 21 W. 140; *Morris v. Healy Lum. Co.* 33 W. 451; *Griffith v. Maxwell* 25 W. 658.

Defects of parties waived if not objected to, *Ralph v. Lomer* 3 W. 410; *Harrington v. Miller* 4 W. 808; *First Nat. Bank v. Hamor* 49 Fed. 45.

Defect waived when demurrer dropped for want of prosecution *Livesley v. O'Brein* 3 W. 546.

Insufficient allegation of defendants neg-

ligence as proximate cause waived if not objected to, *Selby v. Vancouver Water Works* 32 W. 522.

Objection to sufficiency of facts must be made before oral argument on appeal, *Francioli v. Brue* 4 W. 124.

Statute of limitation waived by failure to object, *Bay View Br'g. Co. v. Grubb* 31 W. 34.

Failure to properly traverse original pleadings waived where both parties file amended pleadings, *Ward v. Ward* 14 W. 640.

Insufficiency of complaint on fire insurance policy for failure to specify other insurance must be raised before appeal, *Coats v. West Coast F. etc. Co.* 4 W. 375.

Where complaint should and does not allege facts exonerating plaintiff, objection may be first raised on appeal, *Melntosh v. Renton* 2 W. T. 121; *Sears v. Williams* 9 W. 428.

Motion to open judgment and answer waives objections to jurisdiction of person, *Sayward v. Carlson* 1 W. 29.

After overruling demurrer and filing of answer, discretionary to permit renewal of demurrer, *Blalock v. Condon* 51 W. 604.

**§8351. Contents of Answer. §82.—82.** The answer of the defendant must contain:

1. A general or specific denial of each material allegation of the complaint, controverted by the defendant, or of any knowledge or information thereof sufficient to form a belief.

2. A statement of any new matter constituting a defense or counter claim, in ordinary and concise language without repetition.

Storage charges subject to separate action after judgment for conversion and depreciation against bailee, *Diamond Ice & Storage Co. v. Klock Produce Co.* 103 W. 369.

Set-off, §8353; justification in libel, §8378.

Allegations not controverted admitted, §8381.

Defendant after admitting contract cannot show excuses for non-performance without pleading them, *Lord v. Miller* 86 W. 436.

Defendant may plead superior title, *Munson v. Baldwin* 88 W. 379.

Facts actually or presumably within the personal knowledge of the pleader cannot be denied for want of knowledge, *Olympia v. Turpin*, 70 W. 581.

#### **Denials.**

General denial alleging specific amount good—negative pregnant, *Peters v. McPherson*, 62 W. 496.

Defendants "say that they deny each and every allegation" without motion to make the denial more specific is good, *Town of Denver v. Spokane Falls* 7 W. 226.

A general denial does not admit corporate existence of the plaintiff, *id.*

An answer that "does not deny or admit" is insufficient—where an answer denies conclusions but not the facts it is insufficient—if complaint shows statute of limitations has run, an answer setting up the statute does not set up new matter; *Lake v. Steinbach* 5 W. 659.

Answer that defendant "has no knowledge or information to form a belief" is a sufficient denial, *Colby v. Spokane* 12 W.

690.

Non-joinder not appearing on face of complaint and not pleaded in abatement is waived, *First Natl. Bank v. Hamor (C. C. A.)* 49 Fed. Rep. 45.

Error in improperly striking matter from answer is cured by admitting evidence, *Boardman v. Haper* 24 W. 487.

Allowance of amendment to raise question of individual liability of one defendant on second trial after appeal sustained, *Bishop v. Averill* 19 W. 490.

Averment on information and belief insufficient when facts in knowledge of pleader, *Raymond v. Johnson* 17 W. 232.

In refusal of amendment of answer abuse of discretion must be shown, *West Seattle L. & I. Co. v. Herren* 16 W. 665; abuse shown, *Van Lehn v. Morse* 16 W. 672.

Defenses should be pleaded, *Meeker v. Wren* 1 W. T. 74; *Rolder v. Brown*, *id.* 112.

Denying "generally each and every allegation" of complaint good, *Renter v. Straight* 1 W. 365.

Denial of knowledge or information, *Seattle Nat. Bank v. Meerwaldt* 8 W. 630. Denial of a specific paragraph good, *id.*

Denial of knowledge or contract and affirmative defense of fraud in procuring not inconsistent, *Corbitt v. Harrington* 14 W. 197; see, *O'Connor v. Slatter* 48 W. 493.

If answer, as a whole, sets up semblance of defense cannot be stricken as irrelevant, *Hatch v. Tacoma etc. Ry.* 6 W. 1; *Silsby v. Tacoma etc. Ry.* 6 W. 295.

Answer defective but tenders issue on a material matter, error to give plaintiff judgment on pleadings, *Rourke v. Miller* 3 W. 73.

**— As to Particular Allegations.**

In an action for damages on a joint claim any defendant may plead the claim of all in defense and obtain judgment, if any, for balance, *Brodeck v. Farnum* 11 W. 565.

Denial, on information and belief, as to filing of lien notice in auditor's office insufficient, *Sumpter v. Burnham* 51 W. 599.

Denial of allegation of no adequate remedy at law tenders no issue of fact, *Abbott v. Gaches* 20 W. 517.

Denial of equities entitling plaintiff to receiver must be full and responsive, *Cameron v. Groveland Imp. Co.* 20 W. 169; *Roberts v. Center* 26 W. 435; *Sherman v. Sweeney* 29 W. 321.

Denial of a contract not aided by setting up another version of the contract, *Puget Sd. I. Co. Worthington* 2 W. T. 472; *Trumbull v. Jackman* 9 W. 524; *Peterson v. Seattle Trac. Co.* 23 W. 615.

Affirmative defenses that are mere denials add nothing to general denial, *Johnston v. McCart* 24 W. 19; *Adams v. Casey* 39 W. 37.

Where plaintiff alleges property is separate, answer alleging it is community requires no reply, *Dueber v. Wolfe* 47 W. 634.

Insufficient plea of confession and avoidance amounts to mere denial, *Roberts v. Center* 26 W. 435.

In unlawful detainer, allegation of different lease adds nothing to general denial, *Ryan v. Lambert* 49 W. 649.

**— Negative Pregnant.**

Denial in manner and form admits allegation, *Seattle v. Buzby* 2 W. T. 25.

Plea of statute of limitations held a negative pregnant, *Gammon v. Dyke* 2 W. T. 266; denial of exact amount of complaint is negative pregnant, *Dillon v. Spokane* 3 W. T. 498; negative pregnant, see *Columbia Nat. Bank v. Western I. & S. Co.* 14 W. 162; *Cole v. Noerdlinger* 22 W. 51; *O'Brien v. Seattle Ice. Co.* 43 W. 217.

Answer "that whether said warrant came into the hands of plaintiff as alleged, this defendant has no knowledge or information sufficient to form a belief, and he therefore denies the same" good, *Nat. Bank v. Meerwaldt* 8 W. 630.

Denial that \$50 is a reasonable attorney's fee admits that any sum less is reasonable, *Proulx v. S. & P. M. Co.* 6 W. 478.

Traverse of affidavit in attachment that defendant "is about to assign, secrete and dispose of his property with intent to hinder and delay creditors" is negative pregnant and raises no issue, *Hansen v. Doherty* 1 W. 461.

**— In Particular Cases.**

If mortgagee and constable convert chattels they cannot plead foreclosure as another action pending in action for conversion, *Pickle v. Smalley* 21 W. 473.

In action on a contract against a corporation, an insufficient denial admits authority of agent of corporation, *Frost v. Ainslie L. Co.* 3 W. 241.

In action on foreign judgment, denial that court had jurisdiction and that cause of action never existed insufficient, *Ritchie v. Carpenter* 2 W. 512; *Aultman v. Mills* 9 W. 68.

Where complaint alleges assignment of note, general denial raises issue of owner-

ship, *Tullis v. Shannon* 3 W. 716.

Complaint alleges consideration, answer that bond was "wholly without consideration," mere denial and requires no reply, *Frank v. Jenkins* 11 W. 611.

Allegation that representations were false without stating wherein they were so tenders no issue, *Nat. Bank v. Hughson* 5 W. 100.

Answer setting up conditional contract for conveyance of land but no offer to reconvey or surrender, bad on demurrer, *Kenworthy v. Merritt* 2 W. T. 155.

**Affirmative Defenses.**

Where defendant denies contract, setting up another contract irrelevant, *P. S. I. Co. v. Worthington* 2 W. T. 472; *Trumbull v. Jackman* 9 W. 527; see, *Distler v. Dabney* 3 W. 200; *Osten v. Winehill* 10 W. 33.

Where affirmative defense pleaded, instructions, to jury must not ignore it *Dignan v. Spurr* 3 W. 309.

Allegation that plaintiff had agreed to look to other partner for payment is affirmative defense, *Wadhams v. Page* 1 W. 420.

In action of detainer, allegation of estate in premises failing to allege that it had not ended is insufficient answer *Bellingham Bay etc Ry. v. Strand* 1 W. 133.

In foreclosure of purchase money mortgage grantor having no title, answer may set up expense of defending and compromising suit in ejectment, *Potvin v. Blasher* 9 W. 460.

Answer that plaintiff had sold business and refused to perform contract, whereby defendant was forced to contract with another, good, *Rathbun v. Thurston Co.* 8 W. 238.

Action for rent under lease, answer that all parties agreed lease invalid and made new agreement to occupy at reasonable rental not bad on demurrer, *Isaacs v. Holland* 4 W. 54.

Answer must contain all facts necessary to prevent plaintiff's recovery, *Bruce v. Foley* 18 W. 96.

Inconsistent allegations neutralize each other, *Hendelman v. Kahan* 50 W. 247.

Any new matter, the truth of which is essential to pleaders cause, is affirmative defense, *McKenzie v. Oregon Imp. Co.* 5 W. 409; illegal contract, *Maitland v. Zanga* 14 W. 92; statute of limitations, *Damon v. Leque* 17 W. 573; want of consideration, *Griffith v. Wright* 21 W. 494.

In action on note executed in Oregon, answer that under Oregon statute note is usurious is demurrable, *McDaniel v. Pressler* 3 W. 636; see, *Wood v. Cascade etc. Co.* 8 W. 427.

**Special Defenses.****— Estoppel.**

Estoppel must be specially pleaded as a defense, *Walker v. Baxter* 6 W. 244; *Jacobs v. Nat. Bank* 15 W. 358.

Available both at law and in equity, *Sweeny v. Pacific Coast Elevator Co.* 14 W. 562.

Facts held insufficient as estoppel, *Higgins v. Milwaukee Brg. Co.* 10 W. 579; *Interstate S. & L. Ass'n. v. Knapp* 20 W. 255; *Gay v. Havermale* 27 W. 390; *Pacific etc. Co. v. McNatt* 2 W. 216.



— **Payment.** Cannot be proved under a general denial, *Maney v. Hart* 11 W. 67; *Spokane M. & L. Co. v. McChesney* 1 W. 609; *Richards v. Jefferson* 20 W. 160.

— **Usury.** Must be pleaded when relied on as defense, *Brundage v. Burke* 11 W. 679.

— **Res Judicata.** Not available when parties not the same, *De Mattos v. Jordan* 15 W. 378.

Valid judgment finally negatives every defense that might have been raised, *Isensee v. Austin* 15 W. 352; *Sayward v. Thayer* 9 W. 22; *State v. Gloyd* 14 W. 5.

Judgment on express contract not bar to quantum meruit when different evidence required, *Buddress v. Schaffer* 12 W. 310.

In suit on contractor's bond, recovery by one of sureties against obligee for laborer's wages advanced not res jurisdata, *De Mattos v. Jordan* 15 W. 378.

When jury instructed to disregard claim and evidence on an item for services, judgment is bar, *Stern v. Wash. Nat. Bank* 14 W. 511.

Judgment for breach of contract not bar to suit on notes given as consideration therefor, *Allen v. Wall* 7 W. 316.

Counter-injunction barred where issues identical, *Tacoma v. Commercial etc. Co.* 15 W. 515.

Bankruptcy a bar although fraud alleged, *Johnson v. Joslyn* 45 W. 310.

— **Forbearance.** A promise to forbear to sue, for a consideration, is bar, *Staver et al. v. Missimer* 6 W. 173.

— **Ultra Vires.** If bank has received and retained benefits of a transaction, it cannot plead ultra vires *Tootle v. First Nat. Bank* 6 W. 181.

— **Another Action Pending.** Where answer alleges another action pending reply that it has been dismissed good, *Boyle v. G. N. Ry.* 13 W. 383.

Stay of proceedings on motion instead of by answer not ground for reversal—pendency of creditors bill in foreign court not bar when assignee not party, *State v. Sup. Ct.* 14 W. 686.

— **Tender of Deed.** Where plaintiff offers to complete contract if title good, offer of deed either by executor or by a commissioner good, *Hyde v. Hiller* 10 W. 586.

— **Accord and Satisfaction.** Failure to allege payment or tender fatal, *Rogers*

*v. Spokane* 9 W. 168.

For breach of covenant of warranty, *Reichel v. Jeffrey* 9 W. 250.

**Inconsistent Defenses.**

Denial of consideration and affirmative defense alleging it, inconsistent and plaintiff need not prove, *Allen v. Olympia L. & P. Co.* 13 W. 307; see, *Davis v. Seattle Nat. Bank* 19 W. 65; *Seattle Nat. Bank v. Carter* 13 W. 281.

General denial "except as herein expressly admitted, explained or qualified," will extend to affirmative defense, *Lamberton v. Shannon* 13 W. 404; *Allen v. Chambers* 13 W. 327.

Denial of negligence not inconsistent with allegation of contributory negligence, *Pugh v. O. I. Co.* 14 W. 331.

As to burden of proof, *Lynch v. Richter* 10 W. 486.

Denial of execution of contract and affirmative allegation of fraud in procuring signature not inconsistent, *Loveland v. Jenkins-Boys Co.* 49 W. 369.

**Amendments.**

Case reversed because court allowed amendment substitution of denial for admission of the execution of a promissory note, *Gould v. Gleason* 10 W. 476.

Amendments allowed at trial after three answers already filed not abuse of discretion, *Barnes v. Packwood* 10 W. 50.

Court may allow allegation of two years statute of limitations to be amended to read three years, *Morgan v. Morgan* 10 W. 99.

**Waiver by Appearance.**

Objection to jurisdiction of person waived by appearance and pleading to merits, *Meigs v. Keach* 1 W. T. 305; by motion to open default, *Sayward v. Carlson* 1 W. 29.

Objection for misnomer waived by filing answer, *Lee v. Lee* 3 W. 236.

Filing of substituted answer not waiver of exception to order striking out answer, *Schulte v. Littlejohn* 2 W. 129.

**Judgment on Pleadings.**

Where answer fails to controvert material allegations of complaint, plaintiff entitled to judgment on pleadings, *Port v. Parfit* 4 W. 369; *King v. I. R. & N. Co.* 1 W. 127; *Hanna v. Savage* 7 W. 414.

In action on note answer admits execution of note and negatives allegation of non-payment only by general denial, plaintiff entitled to judgment, *National Bank v. Western I. & S. Co.* 14 W. 162.

Cited 83 W. 242.

§8352. **Counter Claim, What May Be Interposed.** §83.—83. The counter claim mentioned in the preceding section must be one existing in favor of a defendant, and against a plaintiff between whom a several judgment might be had in the action, and arising out of one of the following causes of action:

1. A cause of action arising out of the contract or transaction set forth in the complaint, as the foundation of the plaintiff's claim, or connected with the subject of the action.

2. In an action arising on contract, any other cause of action arising also on contract, and existing at the commencement of the action.

3. The defendant may set forth by answer as many defenses and counter claims as he may have, whether they be such as have been heretofore denominated legal or equitable, or both. They shall each be separately stated, and refer to the causes of action which they are intended to answer, in such a manner that they may be intelligibly distinguished.

In action by city to recover gross earnings tax against street car company loss by company from invalid ordinance requiring commutation tickets cannot be counterclaimed, *Seattle v. Puget Sound Tr., L. & P. Co.* 103 W. 41.

Answer amended to include counterclaim after remand from supreme court, *Smith Sand & Gravel Co. v. Corbin* 102 W. 306.

Pledge of finger rings and redemption with money of company does not entitle receiver to counterclaim, in replevin, pledgor's liability to company, *Hyde v. Clausin* 82 W. 218.

In action on contract, defendant may counterclaim loss of leased engine carelessly, etc., *Russell v. Union Mach. & Supply Co.* 88 W. 532.

Assignor of account may be brought in if defense made against account, *State ex Adjustment Co. v. Court*, 67 W. 355.

In case of assignment, §8272.

Action to rescind sale and cancel chattel mortgage held foreclosure proper counterclaim, *Reynolds v. Dickson* 48 W. 407.

Answer alleging validity of alleged fraudulent assignment of contract proper counterclaim for quieting title, *Gray v. Granger* 48 W. 442.

Counterclaim may be larger than tender of amount admitted to be due, *LaRault v. Palmer* 51 W. 664.

Counterclaim of trespass not allowed in action on injunction bond, *Maughlin Mill Co. v. Hamilton* 61 W. 66.

Damages for construction of ditch is not counterclaim in injunction to prevent filling up ditch, *Morrison v. Bernot* 58 W. 302.

Claim not presented may be set off to extent of debt in action by executor but no judgment over can be had by claimant—note as set off, *Fishburne v. Merchants Bank of Port Townsend* 42 W. 473.

In action to apply pledged property to debt—conversion is not proper counterclaim, *First Nat. Bank v. Fowler* 54 W. 65.

Damages from wrongful attachment in an action is not counterclaim in same action, *Tacoma Mill Co. v. Perry* 32 W. 650.

Damage by removal of lateral support is counterclaim in action for damage by drainage, *Peters v. Lewis* 33 W. 617.

In an action for conversion by sale of chattels mortgaged an answer setting up plaintiff's indebtedness for which the mortgage was security cannot be urged as error after judgment, *Jacobson v. Aberdeen Packing Co.* 26 W. 175.

When counterclaim has been set up and affirmative relief demanded plaintiff cannot dismiss (*Waite v. Wingate* 4 W. 324 overruled), *Washington Natl. Bldg. Etc.*

*Assn. v. Saunders* 24 W. 321.

In an action to foreclose a pledge of stock and counterclaim of paramount title plaintiff cannot dismiss, *id.*

A defendant in a suit for the foreclosure of a mortgage may interpose a legal defense of right to possession, *Hanna v. Reaves* 22 W. 6.

A defendant in foreclosure of mortgage may interpose counterclaim for damages for occupation and use of the premises by plaintiff prior to foreclosure, *First Natl. Bank v. Parker* 28 W. 234.

Demurrer may be interposed to counterclaim, *Caine v. S. & N. Ry Co.* 12 W. 596.

In an action on contract the defendant may counterclaim on contract whether liquidated or not, *Shelton v. Conant* 10 W. 193.

Counterclaim not barred at the commencement of an action does not become so during the pendency thereof, *id.*

A counterclaim that does not exist at the commencement of the action cannot be pleaded unless it is one arising out of the contract or transaction set forth in the complaint, *Connor v. Scott* 16 W. 371.

In a suit by a receiver on a demand due an insolvent corporation the defendant may counterclaim any unliquidated demand arising on contract, *Sheafe v. Hastie* 16 W. 563.

Unliquidated claim for damages may be subject of counterclaim if it arises out of the contract or transaction stated in the complaint, *Niver v. Nash* 7 W. 558.

In action to enjoin defendant from interfering with plaintiff taking gravel from defendant's land defendant cannot counterclaim trespass having no connection with the taking of gravel, *Corliss v. Dunning* 8 W. 332.

In action to rescind contract for sale of land and cancellation of note and mortgage to secure payment, counterclaim and foreclosure may be interposed, *Duggar v. Dempsey* 13 W. 396.

Illegal contract cannot be basis of counterclaim, *Turnbull v. Farnsworth* 1 W. T. 445.

In replevin for goods sold under conditional contract, vendee may counterclaim vendor's breach of contemporaneous agreement as to mode of payment, *Gilbert Co. v. Husted*, 50 W. 61.

In action to quiet title by cancellation of contract of sale defendant cannot counterclaim first payment thereunder, *Kane v. Borthwick*, 50 W. 8.

Cross complaint is in nature of an original action, *Northwestern & P. H. Bank v. Ridpath* 29 W. 687.

**§8353. When Set Off May Be Interposed.** §497.—497. The defendant in a civil action upon a contract expressed or implied, may set off any demand of a like nature against the plaintiff in interest, which existed and belonged to him at the time of the commencement of the suit. And in all such actions, other than upon a negotiable promissory note or bill of exchange, negotiated in good faith and without notice before due, which has been assigned to the plaintiff, he may also set off a demand of a like nature existing against the person to whom he was originally liable, or any assignee prior to the plaintiff, of such contract, provided such demand existed at the time of the assignment thereof, and belonging to the defendant in good faith,



before notice of such assignment, and was such a demand as might have been set off against such person to whom he was originally liable, or such assignee while the contract belonged to him.

Counterclaim, §8352.

Consideration in notes and bills, §4095.

Provisions apply to justices' courts, §9595.

Larger claim against assignor set off against assignee and balance recovered against assignor, *Nut House v. Pacific Oil Mills* 102 W. 114.

Deposit credit a set-off against notes when holder not holder in due course, *Puget Sound State Bank v. Washington Pav. Co.* 94 W. 504.

Ship lighterers may offset indebtedness to them from the charterers of a ship in an action by the owners upon abandonment of the vessel, *Boston Tow Boat Co. v. Sesnon Co.*, 64 W. 375.

Set off damages allowed in action by ad-

ministrator on contract for personal services though there is no action, *Mendenhall v. Davis* 52 W. 169.

General taxes and street assessments are set off against damages for land taken—failure to interpose, *State ex rel. Cook v. Fairley* 45 W. 52.

In action by receiver of insolvent corporation defendant may set off any unliquidated contract claim, *Sheafe v. Hastie* 16 W. 563.

Set-off arises from an independent transaction and is strictly statutory and to be available against an assigned but not indorsed promissory note it must exist at time assignment is made, *Harrisburg Tr. Co. v. Shufeldt* 87 Fed. Rep. 669.

**§8354. Set Off Against Real Party at Interest.** §498.—498. If the plaintiff be a trustee to any other, or if the action be in a name of the plaintiff who has no real interest in the contract upon which the action is founded, so much of a demand existing against those whom the plaintiff represents or for whose benefit the action is brought, may be set off as will satisfy the plaintiff's debt, if the same might have been set off in an action brought by those beneficially interested.

**§8355. Set Off Against Executor.** §499.—499. In actions brought by executors and administrators, demands against their testators and intestates, and belonging to defendant at the time of their death, may be set off by the defendant in the same manner as if the action had been brought by and in the name of the deceased.

Actions by and against executors, §7961.

Claim not presented in administration may be offset in action by executor but no judgment over can be had by claimant—note becoming due before action may be

offset, *Fishburne v. Merchants Bank of Pl. Townsend* 42 W. 473.

Set-off may be interposed without presentation of claim, *Mendenhall v. Davis* 52 W. 169.

**§8356. Judgment Against Executor.** §500.—500. When a set-off shall be established in an action brought by executors or administrators, and a balance found due to the defendant, the judgment rendered thereon against the plaintiff shall have the same effect as if the action had been originally commenced by the defendant.

**§8357. Executor May Set Off.** §501.—501. In actions against executors and administrators and against trustees and others, sued in their representative character, the defendants may set off demands belonging to their testators or intestates or those whom they represent, in the same manner as the person so represented would have been entitled to set off the same, in an action against them.

**§8358. Set Off Must Be Pleaded.** §502.—502. To entitle a defendant to a set-off he must set the same forth in his answer.

**§8359. Judgment for Difference.** §503.—503. If the amount of the set-off duly established, be equal to the plaintiff's debt or demand, judgment shall be rendered that the plaintiff take nothing by his action; if it be less than the plaintiff's debt or demand, the plaintiff shall have judgment for the residue only.

**§8360. No Judgment Over If Contract Has Been Assigned.** §504.—504. If there be found a balance due from the plaintiff in the action to the defendant, judgment shall be rendered in favor of the defendant for the amount thereof, but no such judgment shall be rendered against the plaintiff when the contract which is the subject of the action shall have been assigned before the commencement of such action, nor for any balance due from any other person than the plaintiff in the action.

A claim against an assignor cannot be asserted against the assignee of an executory contract who took it in the execu-

tory stage, in the absence of insolvency of assignor, *King v. West Coast Grocery Co.*, 72 W. 132.

**§8361. Demurrer to Part—Answer to Part.** §84.—84. The defendant may demur to one or more of several causes of action stated in the complaint, and answer the residue.

Demurrer by two defendants overruled if cause of action stated against either, *Beyer v. Bullock* 56 W. 110.

**§8362. Sham Answers May Be Stricken—Terms.** §85.—85. Sham, frivolous and irrelevant answers and defenses may be stricken out on motion, and upon such terms as the court may in its discretion impose.

Pleadings may be stricken, §8338; in part, §8370. exceptions taken, *Kratz v. Dawson*, 8 W. T. 100.

Superfluous matter reached by motion only, *Isaacs v. Holland*, 4 W. 54.

Denial of a material allegation cannot be stricken, *Larson v. Winder*, 14 W. 647.

A sham pleading is one good in form but false in fact, *Brown v. Porter*, 7 W. 327.

Denial of payments on certain particular dates is sham, *Distler v. Dabney*, 7 W. 431.

Motion to strike motion improper, *Mann v. Young*, 1 W. T. 454.

Refusal to strike pleading cannot be reviewed where new pleading filed and no

Failure of defendant in divorce to pay suit money no ground for striking answer, *Bachelor v. Bachelor*, 30 W. 639.

No error to strike answer not required, *State ex rel. Ami. Co. v. Sup. Ct.*, 42 W. 675.

Insufficient denials not ground for striking answer, *Hatch v. Tacoma Co.*, 6 W. 1; *Silsby v. Tacoma Co.* 6 W. 295.

Proper to strike amended answer containing same matter as original held bad on demurrer, *Noyes v. Loughhead*, 9 W. 325; *Rockford v. Doty*, 37 W. 232.

**§8363. Contents of Reply.** §86.—86. When the answer contains new matter constituting a defense or counter claim, the plaintiff may reply to such new matter, denying generally or specifically each allegation controverted by him, or any knowledge or information thereof sufficient to form a belief; and he may allege in ordinary and concise language, without repetition, any new matter not inconsistent with the complaint, constituting a defense to such new matter in the answer.

Reply in mandamus, §8194.

This section is not applicable to pleadings in justice's court, *Bellingham Bay Etc. Ry. Co. v. Strand* 1 W. 136.

One portion of a reply admitting a contract and another portion denying the contract, the latter should be stricken—refusal of court to strike reply is cured by disregarding it at the trial—judgment on the pleadings bad where reply though insufficient in law has been made to affirmative answer, *Davis v. Ford* 15 W. 107.

Action by light company to enjoin a city from interfering with its franchise to which answer of forfeiture is made, a reply showing waiver of forfeiture is proper, *Commercial Electric Light Etc. Co. v. Tacoma* 17 W. 661.

Complaint by wife alleged separate property in action to quiet title to property levied on as community property, answer affirmatively alleged it to be community property, held no reply necessary, *Dueber v. Wolfe* 47 W. 634.

Complaint cannot be enlarged by reply, *Bell v. Waudby*, 4 W. 743; *Distler v. Dabney*, 3 W. 200; *Clark v. Sherman*, 5 W. 681; (see *Dibble v. De Mattos*, 8 W. 543); as to time of filing reply, see *Stimson v. Sachs*, 8 W. 391; *Mounts v. Goranson*, 29 W. 261; *Waite v. Wingate*, 4 W. 324.

Reply not inconsistent with complaint is not departure, *Puget Sd. I. Co. v. Worth-*

*ington*, 2 W. 472; *Ankeny v. Clark*, 1 W. 549; *McCorkle v. Mallory*, 30 W. 632; *Childs L. & M. Co. v. Page*, 28 W. 128; *Dodds v. Gregson*, 35 W. 402; *Erickson v. McLellan Co.* 46 W. 661.

Reply cannot abandon cause in complaint and set up new cause of action, *Osten v. Winehill*, 10 W. 333; *Gile v. Baseel*, 38 W. 212.

Complaint on quantum meruit, answer a written contract, reply admits contract but alleges defendant prevented performance, held departure, *Osten v. Winehill*, 10 W. 333.

Trial without objection to departure in or insufficient reply waives right to urge on appeal, *Dearborn Foundry Co. v. Augustine*, 5 W. 67; *Asplund v. Mattson*, 15 W. 328; *Ritchie v. Carpenter* 2 W. 512.

In equity, insufficiency of reply immaterial when defendants fail to establish answer, *Hill v. Young*, 7 W. 33.

Denial in reply that defendants hold under lease not inconsistent with denial of validity of lease, *Ryan v. Lambert*, 49 W. 649.

Not necessary to reply to affirmative answer in unlawful detainer, *Flife v. Olson*, 5 W. 789.

Reply may allege fraud in release set up in answer, *Sanford v. Royal Ins. Co.*, 11 W. 653.

**§8364. Pleading to Answer.** §87.—87. The plaintiff may demur to an answer containing new matter, when it appears upon the face thereof, that such new matter does not constitute a defense or counter claim, or he may, for like cause, demur to one or more of such defenses or counter claims, and reply to the residue.



Departure in pleading defined, *Ferrandini v. Bankers Life Ass'n* 51 W. 442.

If answer raises material issues it is not demurrable, *Bennett v. T. L. & W. Co.*, 3 W. 337.

Objection to sufficiency of answer should be by demurrer, *Anderson v. Carothers*, 18 W. 520.

No reply necessary where facts admitted by stipulation or allegations of answer

amount to mere denials, *Fife v. Olson* 3 W. 789; *Raymond v. Morrison*, 9 W. 156.

Affirmative defense setting up different version of contract amounts to denial and is demurrable, *Peterson v. Seattle Trac. Co.* 23 W. 615.

Plaintiff need not reply to affirmative defense while demurrer to special defense is undetermined, *Ewing v. Van Wagenen*, 6 W. 39.

**§8365. Failure to Plead to Affirmative Answer Default May Be Had.** §88.—88. If the answer contain a statement of new matter, constituting a defense or counter claim and the plaintiff fail to reply or demur thereto, within the time prescribed by law, the defendant may move the court for such judgment as he is entitled to on the pleadings, and if the case require it he may have a jury called to assess the damages.

Judgment by default, §8109.

Right to judgment not waived by reply to defective answer, *Post v. Parfit*, 4 W. 369; see *Dillon v. Spokane Co.*, 3 W. T. 498; *King v. Ilwaco R. & N. Co.*, 1 W. 127; *Lake v. Steinback*, 5 W. 659.

Reply necessary only to new matter inconsistent with complaint, *Lake v. Steinbach* 5 W. 659; *Frank v. Jenkins*, 11 W. 611.

Affirmative answer with no reply is as finding of court, *Smith v. Ormsby*, 20 W. 396.

Judgment on failure to reply to allegation in answer which is mere denial of allegation of complaint erroneous, *Raymond v. Morrison*, 10 W. 156.

Where reply, though insufficient, has been filed, judgment erroneous, *Davis v. Ford*, 15 W. 107.

Judgment for defendant erroneous where burden is on him, *Hoshor v. Kautz* 19 W. 258.

Admission of affirmative defense warrants judgment for defendant, *Rockford Shoe Co. v. Jacob*, 6 W. 421.

Where no technical objection and pleadings incapable of amendment, judgment thereon proper, *Hubenthal v. Spokane etc. Ry.*, 43 W. 677.

In motion for judgment on pleadings allegations admitted although denied. *Fishburne v. Merchants' Bank*, 42 W. 473.

**§8366. Demurrer to Reply—Sham Reply.** §89.—89. The defendant may demur to any new matter contained in the reply, when it appears upon the face thereof that such new matter is not a sufficient reply to the facts stated in the answer. Sham, frivolous and irrelevant replies, may be stricken out in like manner and on the same terms as like answers and defenses.

Motions to strike pleadings, §§8362, 8370, 8338.

Error in sustaining demurrer to reply cured by admitting testimony under it, *Washington Natl. Etc. Assn. v. Saunders* 24 W. 321.

Reply not traversing affirmative answer demurrable, *Hughes v. N. Y. L. Ins. Co.*, 32 W. 1.

Part of reply admits contract another part denies, reply may be stricken, *Davis v. Ford*, 15 W. 107.

**§8367. Rules of Court for Time of Filing Pleadings.** §90.—90. The court shall establish the rules prescribing the time in which the pleadings subsequent to the complaint shall be filed.

Rules of superior courts §8431c.

Power to make rules generally, §8635.

Filing of pleadings, §8483.

Refusal of the court to give judgment to defendant on affirmative answer is not error when there is no rule of court prescribing the time for reply, *Waite v. Wingate* 4 W. 324.

Rules of court are a part of record of every case, *Walla Walla v. Budd* 2 W. T. 336.

Demurrer filed after time without first obtaining consent of court sustained, *State ex rel. Hannebohl v. Superior Court* 85 W. 663.

## PLEADINGS—GENERAL RULES.

Issues of law and fact defined §8473.

**§8368. Pleading Written Instruments and Accounts.** §93.—93. It shall not be necessary for a party to set forth in a pleading a copy of the instrument of writing, or the items of an account therein alleged; but unless he file a verified copy thereof with such pleadings, and serve the same on the adverse party, he shall, within ten days after a demand thereof, in writing, deliver to the adverse party a copy of such instrument of writing, or the items of an account, verified by his own oath, or that of his agent or attorney, to the effect that he believes it to be true, or be precluded from giving evidence thereof. The court, or judge thereof, may order a further account, when the one delivered is defective; and the court may, in all cases, order a bill of particulars of the claim of either party to be furnished.

Negotiable instruments, agency, §4090.  
Customs, etc., mining districts, §7996.  
Defective bond §7431.

Evidence of value of medicines excluded for failure of physician to give bill, *Sanborn v. Dentler* 97 W. 149.

Account not as full as demanded may be proven, *Carstens v. Nut House* 96 W. 50.

Motion for an order is "demand in writing" and is "upon notice," *Gates v. Herr* 102 W. 131.

General custom need not be pleaded, *Ryder-Cougar Co. v. Garretson* 53 W. 71.

Statutes of other states should be pleaded, *Ongaro v. Twohy* 49 W. 93.

Proof should be restricted to bill of particulars, *Powers v. Washington P. C. Co.* 79 W. 1.

Denied where ultimate facts were pleaded, *Switzer v. Sherwood* 80 W. 19.

Does not apply to actions under the Factory Act, *Mathis v. Western Furniture Co.* 72 W. 206.

Matter must be of such character that particulars can be made—attorneys' services cannot be particularized, *Moore v. Scharnikow* 48 W. 564.

Particulars denied in charge of embezzlement, *State v. Lewis* 31 W. 75.

Duplicity of bill of particulars in criminal cases does not vitiate information, *State v. Dix* 33 W. 405.

Bill of particulars should not be ordered to require evidence, *Ingram v. Wishkah Boom Co.* 35 W. 191.

Bill of particulars held insufficient, *Isam v. Parker* 3 W. 756.

It is not error for the court to refuse bill of particulars of public accounts. Requiring bill is largely in the discretion of the court, *Frery v. King County* 2 W. 337; no Federal question, 141 U. S. 668.

In an action of unlawful detainer defendant made demand for copy of notice to quit, the record is silent as to refusal to

furnish notice, judgment for default will not be disturbed, *Ferguson v. Hoshi* 25 W. 664.

Action for damages seeking to recover items of special damages the defendant is entitled to particulars of the special damages, *Turner v. Great N. Ry. Co.* 15 W. 213.

Plaintiff pleaded but not fully legal effect of contract, defendant pleaded contract in haec verba which showed facts to defeat plaintiff, reply confessed and avoided, held, not a departure, *Childs Lumber & Mfg. Co. v. Page* 28 W. 128.

Recovery in personal damage must be confined to bill of particulars though it was voluntarily given, *Howells v. N. A. T. & T. Co.* 24 W. 689.

Party is limited in proofs to bill of particulars voluntarily given, *Seattle v. Parker* 13 W. 450.

It is error to refuse requirement of itemized value of articles in replevin, *Hall v. Law Guarantee & L. Society* 22 W. 305.

Proofs not confined to bill of particulars if other party not misled, *Spokane & Idaho Lumber Co. v. Loy* 21 W. 501.

Legal effect of articles of private corporation may be pleaded, *Seal v. Cameron* 24 W. 62.

Particulars of evidence cannot be demanded, *Blackburn v. Washington Gold Mining Co.* 19 W. 361.

Motion for bill of particulars extends time of answering, *Plummer v. Weil* 15 W. 427.

Items improperly united in bill of particulars does not render complaint demurrable—departure in bill of particulars is not departure in pleadings, *Dudley v. Duval* 29 W. 528.

Bill of adverse party in response to motion is admissible in evidence, *American Copper B. & I. Works v. Galland-Burke B. & M. Co.* 30 W. 178.

**§8369. Pleadings to Be Liberally Construed.** §94.—94. In the construction of a pleading, for the purpose of determining its effect, its allegation shall be liberally construed, with a view to substantial justice between the parties.

Garnishee may offset liens against fund due, *Puget Sound Mach. Depot v. Pearson* 99 W. 362.

Complaint held to state cause of action for fraud, *Rochfort v. Quikstad* 90 W. 432.

No demurrer interposed complaint liberally construed, *Johnson v. Ryan*, 62 W. 60.

Complaint alleging that defendants "eloigned and converted to their own use about 133,000 feet of said logs, which were of the value of \$675," if not objected to is sufficient, *Livingstone v. Lovgren* 27 W. 102.

Objection that a mere conclusion of law is stated cannot be urged on the ground that the complaint does not state facts to constitute a cause of action, *id.*

Pleadings are no longer most strongly construed against the pleader, *Isaacs v. Holland* 4 W. 54.

In an action on a written instrument it is sufficient to refer to it in the complaint and attach the instrument as an exhibit, *Hays v. Dennis* 11 W. 360.

Pleading sufficient if shows right that should be enforced, *Chambers v. Hoover*, 3 W. T. 107.

Section applies to form not fundamental requisites of action, *P. S. I. Co. v. Worthington*, 2 W. T. 472; *Renton v. St. Louis*, 1 W. T. 215; *Newberg v. Farmer*, 1 W. T. 182; *Harris v. Halverson*, 23 W. 779; *Grout v. Tacoma etc. Co.*, 33 W. 524; *Malloy v. Benway*, 34 W. 315.

Specific allegations control general averments, *Malloy v. Benway*, 34 W. 315.

Express admissions control direct averments, *Irwin v. Buffalo-Pitts. Co.*, 39 W. 346.

Inappropriate words construed in favor of pleadings if meaning evident, *Boyle v. G. N. Ry.*, 13 W. 383.

Liberal construction on motion for judgment on pleadings, *Townsend v. Price*, 19

Where no previous objection, pleadings liberally construed at trial or after judgment, *Walsh v. Meyer*, 40 W. 650; *Johnson v. Leonhard*, 1 W. 564; *Coats v. W. C. F. Ins. Co.*, 4 W. 375; *Lyen v. Bond*, 3 W. T. 407; *King v. Ilwaco Ry.*, 1 W. 127; *Montesano v. Blair*, 12 W. 188; *Bishop v. Averill*, 17 W. 209; *Mosher v. Bruhn*, 15 W. 332; *Hall v. Woolery*, 20 W. 440; *Carey v. Hays*, 41 W. 580; *Island County v. Babcock*, 17 W. 438; *State ex rel. San-*



der v. Jones, 20 W. 576; Turner v. Turner, 33 W. 118.

Value of collateral presumed from ex-

tension of note secured thereby, Commercial Bank v. Hart, 10 W. 303.

**§8370. Redundant or Indefinite Pleadings Cured by Motion. §95.—95.** If irrelevant or redundant matter be inserted in a pleading, it may be stricken out on motion of any person aggrieved thereby; and when the allegations of a pleading are so indefinite or uncertain that the precise nature of the charge or defense is not apparent, the court may require the pleading to be made definite and certain by amendment, or may dismiss the same.

Motions, rules of superior courts §8431e.

Pleadings stricken entirely, §§8338, 8362.

In case of doubt as to what part of a paragraph is denied proper remedy is motion to make definite and certain, O'Brien v. Seattle Ice Co. 43 W. 217.

Damage to lands and personal property lumped is indefinite, Berg v. Humptulips Boom Etc. Co. 38 W. 342.

In libel case pleadings required to be made more definite, McClure v. Review Publishing Co. 38 W. 160.

Refusal to cause complaint to be made definite to show who made payments on promissory note waiving limitation reversed, O'Neil v. Hurley 41 W. 649.

This section is applicable to petitions in probate, In re Renton's Estate 10 W. 533.

Reply amended on trial is subject to motion to make more definite and certain, Griffith v. Wright 21 W. 494.

Matter irrelevant which has no bearing on question in controversy, Hatch v. T. O. & G. H. Ry., 6 W. 1.

Evidential matter may be stricken, Bigelow v. Scott, 2 W. T. 378.

Superfluous matter reached only by motion, Isaacs v. Holland 4 W. 54.

Refusal to strike irrelevant reply to irrelevant matter in answer not error, P. S. I. Co. v. Worthington, 2 W. T. 472.

General denial of material allegations cannot be stricken, Larson v. Winder, 14 W. 647.

In divorce, physical and financial condition of party not irrelevant, Lee v. Lee, 3 W. 236.

In action for damage to abutting property by construction of railroad, allegation of license from city reached only by demurrer, Hatch v. T. O. & G. H. Ry., 6 W. 1.

Allegations must be specific and certain, Roedes v. Brown, 1 W. T. 112; Wilkeson Coal Co. v. Driver, 9 W. 177; Hastings v. Anacortes P. Co., 29 W. 224; Woodcock v. Guy, 33 W. 234.

No error in striking part if remainder enables party to put in whole case, Penter v. Straight 1 W. 365.

Failure of court to strike not prejudicial

when no evidence introduced and jury properly instructed, Waldron v. C. P. Ry., 22 W. 253; Tyler v. N. A. T. & T. Co., 24 W. 253; Hilbig v. Grays Harbor Elec. Co., 37 W. 130.

Irrelevant and redundant matter may be stricken, Allen v. Olympia L. & P. Co., 13 W. 307; State v. Lorenz, 22 W. 289; Williams v. Minemire, 23 W. 393; Jordan v. Coulter, 30 W. 116; Rand, McNally & Co. v. Royal, 36 W. 420; Tait v. Pigott, 38 W. 59.

Remedy for insufficient answers to interrogatories is motion to make more definite, Knapp v. Order of Pendo, 36 W. 601.

Indefinite and uncertain allegations reached only by motion, C. & P. S. Ry. v. Hawthorne 3 W. T. 353; Wilkeson Coal Co. v. Driver, 9 W. 177; Fares v. Gleason, 14 W. 657; Waldo v. Milroy, 19 W. 156; Croft v. Northwestern S. Co., 20 W. 175; Hall v. Law. G. & T. Soc., 22 W. 305; but see Kizer v. Cauffield, 17 W. 417; Welser v. Holzman, 33 W. 87.

In action for deed to tide lands by reason of ownership of upland, description of uplands may be required, Washington Imp. Co. v. Canal Coal Co., 45 W. 462.

Conclusions of law in complaint reached by motion, Harris v. Halverson, 23 W. 779; Isaacs v. Holland, 4 W. 54.

Motion to make more definite cannot require pleading of irrelevant matter, Goupille v. Chaput, 43 W. 702.

Motion denied where pleading sufficient to advise adverse party, Ekstrand v. Barth, 41 W. 321; Port Townsend v. Trumbull, 40 W. 386; Boyer v. Robinson 43 W. 97.

Motion to make definite waived when not brought up for hearing before trial, Isham v. Parker, 3 W. 755.

Appeal does not lie from order striking complaint from files, Vaktaren Pub. Co. v. Pacific Pub. Co., 41 W. 355; but see Hays v. Peavey, 43 W. 163.

Defects or uncertainties may be cured by pleadings of adverse party, Sengfelder v. Mutual L. Ins. Co., 5 W. 121; Cert, Schloss & Co. v. Wallace, 14 W. 249; Megrath v. Gilmore, 15 W. 558; Bates v. Drake, 28 W. 447; Rattelmiller v. Stone, 28 W. 104.

**§8371. Pleading Judgments of Courts of Special Jurisdiction. §96.—96.** In pleading a judgment or other determination of a court or office of special jurisdiction, it shall not be necessary to state the facts conferring jurisdiction, but such judgment or determination may be stated to have been duly given or made. If such allegation be controverted, the party pleading shall be bound to establish on the trial the facts conferring jurisdiction.

Foreign judgments, actions on, §7997.

**§8372. Conditions Precedent Need Not Be Set Out Specifically. §97.—97.** In pleading the performance of conditions precedent in a contract, it shall not be necessary to state the facts showing such performance, but it may be stated generally, that the party duly performed all the con-

ditions on his part; and if such allegation be controverted, the party pleading shall be bound to establish, on the trial, the facts showing such performance.

Allegation of performance of contract sufficient though contract within statute of frauds *Wilson-Case Lum. Co. v. Mountain Timber Co.* 200 Fed. 181.

writing, *Wilson Case Lum. Co. v. Mountain Timber Co.*, 200 Fed. 181.

Only conditions precedent and necessary to creation of contract—not conditions subsequent, *Port Blakely Mill Co. v. Hartford etc. Co.* 50 W. 657.

**§8373. Private Statute Pled by Title.** §98.—98. In pleading a private statute, or a right derived therefrom, it shall be sufficient to refer to such statute by its title, and the day of its passage, and the court shall thereupon take judicial notice thereof.

Supplementary—AN ACT to provide for pleading municipal charters and ordinances, and the evidence thereof. Approved October 18, 1881. C81 §12062-64.

**§8374. City Ordinances to Be Recorded—Evidence.** §2060.—That All ordinances passed by any city council, or board of trustees or other municipal corporation within the State of Washington, shall be recorded in a book to be kept for that purpose by the city clerk, or clerk of such board of trustees or municipal corporation, of such city, and when so recorded the record thereof so made shall be received in any court of this state as prima facie evidence of the due passage of such ordinances as recorded. And this act shall apply as well to all ordinances heretofore as hereafter so passed and recorded. And when the ordinances of any city or town are printed by authority of such municipal corporation, the printed copies thereof shall be received as prima facie evidence that such ordinances as printed and published were duly passed.

Denial of power to pass ordinance does not put in issue regularity of enactment, *Davison v. Walla Walla* 52 W. 453.

Pleading of ordinances by number and date of passage is sufficient in action to recover on covenant against incumbrance of street assessment, *Green v. Tidball* 26 W. 338.

Certified ordinance as evidence—passage questioned, *Grove v. Tacoma* 34 W. 434.

**§8375. Pleading Existence of City, Etc.** §2063. That in pleading the existence of any city or town within this state, it shall be sufficient to state in such pleading that the same is an existing city or town incorporated or organized under the laws of Washington.

**§8376. Pleading Ordinance—Judicial Notice.** §2064.—3. That in pleading any ordinance of a city or town in this state it shall be sufficient to state the title of such ordinance and the date of its passage, whereupon the court shall take judicial knowledge of the existence of such ordinance and the tenor and effect thereof. Cited, 103 W. 180.

Judicial notice of ordinances pleaded by title, *Seattle, R. & S. Ry. Co. v. Seattle*, 190 Fed. 75.

Municipal court will take judicial notice of ordinance without mention, *Seattle v. Pearson* 15 W. 575.

Statute applied in, *Seattle R. & S. Co. v. Pearson* 15 W. 575.

**§8377. Pleading Libel and Slander.** §99.—99. In an action for libel or slander, it shall not be necessary to state in the complaint any extrinsic facts, for the purpose of showing the application to the plaintiff, of the defamatory matter out of which the cause of action arose, but it shall be sufficient to state generally, that the same was published or spoken concerning the plaintiff; and if such allegation be controverted, the plaintiff shall be bound to establish on trial that it was so published or spoken.

Opening and closing argument to jury goes to party having burden of proof, *Olympia Water Works v. Mottman* 88 W. 694.

Article must be set out in full where necessary to ascertain meaning of objectionable part *McClure v. Review Pub. Co.*, 38 W. 160.

Publishing plaintiff's photograph with story of father's crime is not libel, *Hillman v. Star Pub. Co.*, 64 W. 691.

Publication that plaintiff secured marriage license, tried to suppress the fact, and could not find bride not libelous per se, *Whitehouse v. Cowles*, 48 W. 546.

Pleading should allege plaintiff was referred to, *Dunlap v. Sundberg* 55 W. 609.

Oral defamation not criminal libel, *State v. McArthur*, 5 W. 558.

Failure to state words were maliciously spoken not objectionable if malice otherwise shown, *Stewart v. Major*, 17 W. 238.

In civil actions question one of law where language ambiguous—meaning cannot be extended by innuendo—not libel per se to accuse of lack of quality not required of good citizen, *Urban v. Helmick*, 15 W. 155.

That a man "has another wife back east" is actionable slander—statement that a man is not fit to associate with other people and has been in jail not actionable, *Bleitz v. Carton*, 49 W. 545.



**§8378. Truth as Defense in Libel and Slander. §100.—100.** In an action mentioned in the last section, the defendant may, in his answer, allege both the truth of the matter charged as defamatory, and any mitigating circumstances to reduce the amount of damages; and whether he prove the justification or not, he may give in evidence the mitigating circumstances.

If matter is libelous per se it is not necessary to allege untruth, *Wilson v. Sun Pub. Co.* 85 W. 503.

Truth as defense in criminal libel, §8954.

The truth though pleaded merely in mitigation may be shown to defeat recovery, *Haines v. Spokane Chronicle Pub. Co.* 11 W. 503.

Truth is defense to civil action—variance, *Leghorn v. Review Pub. Co.* 31 W. 627; see, *Chambers v. Leiser* 43 W. 285.

Charging bigamy "if what Mr. D. tells me is true" in considering applicant's qualifications for lodge is privileged communication, *Bleitz v. Carton*, 49 W. 545.

**§8379. Pleading Title to Realty in Action of Distress. §101.—101.** In an action to recover the possession of property distrained, doing damage, an answer that the defendant or person by whose command he acted, was lawfully possessed of the real property upon which the distress was made, and that the property distrained was at the time doing the damage thereon, shall be good, without setting forth the title to such real property.

County holds tax sale lands in trust for session, *id.* 83 W. 303.

all funds for which taxes levied, *Gustaverson v. Dwyer* 78 W. 336; no adverse pos-

session, *id.* 83 W. 303.  
Distress of animals damage feasant, §1975.

**§8380. Causes of Action May Be United. §102.** The plaintiff may unite several causes of action in the same complaint, when they all arise out of,—

1. Contract, express or implied; or
2. Injuries, with or without force, to the person; or
3. Injuries, with or without force, to property; or
4. Injuries, to character; or
5. Claims to recover real property, with or without damages for the withholding thereof; or
6. Claims to recover personal property, with or without damages for the withholding thereof; or
7. Claims against a trustee, by virtue of a contract or by operation of law.
8. The same transaction.

But the causes of action so united must affect all the parties to the action, and not require different places of trial, and must be separately stated. L. '07, 172

Two notes, one secured by mortgage, may be united, *Murphy v. Prosser* 96 W. 499.

Damages for failure of lessor to erect buildings and expense of caring for lessor's share of crop may be joined, *McNall v. Sandygren* 100 W. 133.

Joining of causes of action is confused question, *Welch v. Northern Bank & Tr. Co.* 100 W. 349.

Parent and child have separate causes of action for injury to child, *Flessner v. Carstens Packing Co.* 96 W. 505.

Pleadings, court rules §8431a.

Broker to be paid by both parties in an exchange of property he may sue for commission and damage by default of one party in the same action, *Littlefield v. Bowen* 90 W. 286.

Party agreeing to pay claims cannot be joined in action for tort, *Trana v. Chicago, M. & St. P. Ry. Co.* 228 Fed. 824.

Causes of action for rental and replevin of pump must be joined, *Stilwell v. Union Mach. & Supply Co.* 94 W. 61.

It seems that causes of action arising from one contract need not be separately stated, *Boyce v. Chicago, M. & St. P. Ry. Co.* 82 W. 204.

Damage for venereal disease should be joined with divorce, *Schultz v. Christopher*, 65 W. 496.

Breach of warranty in sale and damages by runaway horse may be joined, *Muller-*

*lelle v. Brandt*, 64 W. 280.

Where employer maintained a hospital by fees retained from wages, causes of action for personal injuries and for failure to use diligence in carrying plaintiff to the hospital, may be joined, *Harding v. Ostrander Co.*, 64 W. 225.

Actions against the same defendant to recover moneys paid under contracts obtained by fraud may be joined in a suit by an assignee of the various claimants, *Bell v. Jovita Heights Co.* 71 W. 7.

Want of separate statement of causes cured by motion, *Peterson v. Pantheon Lumber Co.*, 62 W. 189.

Causes must be pleaded separately, §8338.

Improper joinder of causes raised by special demurrer, *Ames v. Kinnear* 42 W. 80.

Complaint capable of double construction sustained when no election required, *Blair v. Wilkeson Coal & Coke Co.* 54 W. 334.

Two distinct contracts joined, *Moylan v. Moylan* 49 W. 341.

Complaint in equity stricken because actions not separately stated, *Hockersmith v. Ferguson* 51 W. 256.

Contractor and wife may be joined in foreclosure of mechanics' lien, *Rasmussen v. Liming* 50 W. 184.

Action on injunction bond may allege damages greater than secured by bond

**Maughlin, Mill Co. v. Hamilton** 61 W. 66.

Legal and equitable causes may be joined as in action against manager of a plant for accounting and conversion—denial of jury, **Lindley v. McGlaulin** 57 W. 581.

Husband's action for funeral expenses and child's action for death of mother cannot be joined, **Johnson v. Seattle Electric Co.** 39 W. 211.

In an action for damages for the detention of premises rental value is provable as an element, **Columbia Etc. R. R. Co. v. Histogenetic Etc. Co.** 14 W. 475.

Single transaction consisting of tort and contract are properly basis of one action, **Barto v. Nix** 15 W. 563.

Cause of action for services and another upon guaranty may be united, **Dudley v. Duval** 29 W. 528.

Action on carriers contract and against conductor for wrongfully ejecting passenger cannot be united, **Clark v. Great Northern Ry.** 31 W. 658.

Damages for breach of contract and for

wrongful taking of possession may be united, **McCorkle v. Mallory** 30 W. 632.

In action for wrongful eviction proper to join actions for property destroyed and property converted, both arising from same act, **McClure v. Campbell**, 42 W. 252.

Actions for divorce and to set aside fraudulent conveyances properly joined, **Prouty v. Prouty**, 4 W. 174.

Where plaintiff states equitable and legal causes separately and has in fact but one cause, error to require election 34 W. 175.

Actions against state to annul criminal judgment, state dental board on license, and dental societies for damages is misjoinder, **Brown v. State**, 46 W. 399.

General denial does not admit incorporation of plaintiff, **Denver v. Spokane Falls**, 7 W. 226.

Action united against contractor, his bond and subcontractor on county work, **Cascade Lumber & S. Co. v. Wright** 99 W. 421.

**§8381. Matter Not Controverted Deemed True. §103.—103.** Every material allegation of the complaint, not controverted by the answer, and every material allegation of new matter in the answer, not controverted by the reply, shall, for the purpose of action, be taken as true; but the allegation of new matter in a reply, is to be deemed controverted by the adverse party, as upon a direct denial or avoidance, as the case may require.

Partial judgment on admissions §8420.

Court properly refused continuance to enable defendant to answer plaintiff's amended reply, **Margett v. Wilson** 85 W. 98.

Matter of answer covered by complaint failure to reply does not admit answer, **Ball v. Scranton Coal Mines Co.** 59 W. 659.

Admission in answer stricken at instance of defendant not binding, **Wiley v. Nor. Pac. R. Co.** 60 W. 597.

An answer to a complaint on a bond that "the bond was wholly and absolutely without any consideration" amounts to a denial and does not require reply, **Frank v. Jenkins** 11 W. 611.

An answer that denies a conclusion is bad, **Lake v. Steinbach** 5 W. 659.

Answer alleging affirmative matter it is error to treat such affirmative matter as

denied without reply, **Johnson v. Maxwell** 2 W. 482.

Admissions by failure to traverse, **Sengfelder v. Mutual L. Ins. Co.**, 5 W. 121; **Roberts v. Center** 26 W. 435; **Sherman v. Sweeny**, 29 W. 321; **Childs Lum. Co. v. Page**, 32 W. 250.

Insufficient denial is no denial, **Frost v. Ainslie L. Co.**, 3 W. 241.

Failure to reply must be brought to court's notice or is waived, **Ritchie v. Carpenter**, 2 W. 512.

Proof of admitted facts not necessary, **Fitzgerald v. School Dist.**, 5 W. 112.

Allegations not construed as admissions unless so intended or construction necessary, **Turner v. Turner**, 3 W. 118; **American Copper Wks. v. Galland-Burke Co.**, 30 W. 178; **Browder v. Phinney**, 37 W. 70; **Collier v. G. N. Ry.**, 40 W. 639; **Irwin v. Buffalo-Pitts. Co.**, 39 W. 346.

**§8382. Material Allegation Defined. §104.—104.** A material allegation in a pleading is one essential to the claim or defense, and which could not be stricken from the pleading without leaving it insufficient.

## PLEADINGS—VERIFICATION OF.

**§8383. Signing and Verification of Pleadings. §91.—91.** Every pleading shall be subscribed by the party or his attorney, and, except a demurrer, shall also be verified by the party, his agent or attorney, to the effect that he believes it to be true. The verification must be made by the affidavit of the party, or, if there be several parties united in interest and pleading together, by one at least of such parties, if such party be within the county and capable of making the affidavit; otherwise the affidavit may be made by the agent or attorney of the party. The affidavit may also be made by the agent or attorney if the action or defense be founded on a written instrument for the payment of money only, and such instrument be in the possession of the agent or attorney, or if all the material allegations of the pleading be within the personal knowledge of the agent or attorney. When the affidavit is made by the agent or attorney it must set forth the reason of his making it. When a corporation is a party, the verification may be



made by any officer thereof, upon whom service of a notice might be made; and when the state, or any officer thereof in its behalf, is a party, the verification may be made by any person to whom all the material allegations of the pleading are known.

When the party is absent from or a non-resident of the county in which suit is brought the verification may be made by the agent or attorney of said party. L. '88 29.

Verification by public corporation, §8395.

Not verified stricken, §8338.

Pleadings are not proof, §8385.

Complaint asking for a temporary injunction verified on belief is sufficient, Cady v. Case 11 W. 124.

In divorce, verification that plaintiff believes complaint to be true sufficient, Burdick v. Burdick, 7 W. 533.

On appeal defective verification considered amended, Smith v. Newell, 32 W. 369.

**§8384. Verification of Answer Omitted if it Would Criminate Pleader.** §92.—92. When in the judgment of the court, an answer to an allegation in any pleading might subject the party answering, to a criminal prosecution, the verification of the answer to such allegation may be omitted. No pleading shall be used in a criminal prosecution against the party, as evidence of a fact alleged in such pleading.

In a prosecution for embezzlement it is error to admit in evidence the complaint and answer in a civil case involving the same property—admissions of a defendant

in a civil action when not made under compulsion may be put in evidence, State v. Hopkins 13 W. 5.

**§8385. Pleadings Are Not Proof.** §741.—741. Pleadings sworn to by either party in any case, shall not, on the trial, be deemed proof of the facts alleged therein, nor require other or greater proof on the part of the adverse party.

Verification of pleadings, §8383.

Pleadings may be introduced in evidence and are conclusive, O. R. & N. Co. v. Dacres, 1 W. 195.

Plaintiff cannot avail himself of original complaint where amended complaint

filed, though adversary may, Sengfelder v. Hill, 16 W. 355.

Where allegation of amended complaint not denied by answer contrary allegation of original not admitted in evidence, Goldwater v. Burnside, 22 W. 215.

## PROHIBITION.

**Title of Act and General Sections at §7415, 8390.**

Rules of supreme court §7338s.

**§8386. Prohibition Is Counterpart of Mandamus.** §29. The writ of prohibition is the counterpart of the writ of mandate. It arrests the proceedings of any tribunal, corporation, board or person, when such proceedings are without or in excess of the jurisdiction of such tribunal, corporation, board, or person.

Will lie to prevent court from granting injunctive relief on amended complaint, in forcible entry and detainer, State ex Seaborn v. Court 102 W. 215.

Will not lie if court has jurisdiction of parties and subject matter, State ex Rose v. Ralston 102 W. 268.

Will not lie to prevent judgment in unlawful detainer without notice to quit or payment, State ex Robertson v. Court 95 W. 447.

Will not lie to compel trial of condemnation by one jury instead of two, State ex Bellingham v. Abrahamson 98 W. 370.

Court proceeded with two juries in condemnation, held prohibition would not lie there being remedy by appeal, State ex Bellingham v. Abrahamson 98 W. 370.

Change of venue refused writ will lie, State ex Martin v. Court 97 W. 358.

Will lie to prevent court from restraining state officers from expenditure of state funds, at instance of taxpayer, State ex rel. Pierce County v. Superior Court 86 W. 685.

Will not lie to prevent visiting judge from erroneously ruling on issue not intended to submit to him—powers of two judges in receivership, State ex rel. Cal-

houn v. Superior Court 86 W. 492.

Will lie to prevent court proceeding attempted service which does not confer jurisdiction, State ex rel. Hopman v. Superior Court 88 W. 612.

Will lie to prevent second receivership, State ex rel. Fidelity & Dep. Co. v. Superior Court 87 W. 498.

Will not lie to prevent court acting in probate jurisdiction depending on residence of deceased—appeal, State ex rel. Neal v. Kauffman 86 W. 172.

Will not lie when amount less than \$200 unless exceptions in Const., Art. 4, §4, State ex rel. Prentice v. Superior Court 86 W. 90.

Will not lie against jurisdiction in equity to vacate judgment after one year, State ex rel. Prentice v. Superior Court 86 W. 90.

Will lie to prevent vacation of foreclosure after redemption expires, vacation sought for want of personal service—appeal inadequate, State ex rel. Pacific Loan, etc., Co. v. Superior Court 84 W. 392.

Will lie to prevent superior court from enforcing alimony pending appeal from superseded decree, Surry v. Surry 84 W. 269.

Will lie to prevent issue of execution on

judgment appealed from, State ex rel. Merrill v. Superior Court 80 W. 109.

Will lie to prevent contest of will without jurisdiction, after limitation has run, State ex rel. Wood v. Superior Court 76 W. 27.

Will lie to prevent enforcement of temporary alimony after stay, State ex rel. Surry v. Superior Court 74 W. 689.

Will not lie in condemnation proceedings against defendants and "unknown owners" and refusal of the court to substitute defendants, State ex rel. Grant Realty Co. v. Superior Court 76 W. 376.

Will not lie to prevent injunction of defendant on question of res judicata, State ex rel. Murphy v. Wright 76 W. 383.

Prohibition to arrest proceedings in "excess" of jurisdiction—former decisions holding writ concurrent with certiorari overruled, State ex rel. Meyer v. Clifford 78 W. 555.

Will lie to prevent trial after motion for change of venue, State ex rel. Jones v. Gay, 65 W. 629.

Will not lie against contempt order, State ex rel. Com'rs v. Court, 73 W. 296.

Will not lie to prevent trial after one change of venue, another change being sought for prejudice of judge, State ex rel. Moore v. Court, 70 W. 362.

Will not lie after denial of motion to vacate default, State ex rel. Skamser v. Court, 65 W. 457.

Does not lie to restrain police judge from hearing criminal charge on refusal to change venue or law invalid, State ex rel. Lyon v. Superior Court 53 W. 361.

Suspension of injunction pending appeal is discretionary, prohibition will not be granted, State ex rel. Burrows v. Superior Court 43 W. 225.

Prohibition is for purpose of restraining judicial acts, State ex rel. Bennett v. Taylor 54 W. 150.

Will lie to prevent superior court reviewing revocation of liquor license there being no review, State ex rel. Aberdeen v. Superior Court 44 W. 526.

Will not lie to prevent proceedings to allow appeal in intervention, Hindman v. Colvin 46 W. 317.

Will not lie to compel change of venue, State ex rel. La Furgey v. Superior Court 47 W. 154.

Will not lie to prevent trial under void city ordinance, State ex rel. Martin v. Hinkle 47 W. 156.

Will lie to prevent superior court reviewing revocation of license by council if license would expire before appeal could be heard—certiorari, State ex rel. Puyallup v. Superior Court 50 W. 650.

Will not lie to restrain criminal proceedings under alleged unconstitutional law, State ex rel. McCalley v. Superior Court 51 W. 572.

Will not lie to prevent superior court from proceeding to trial when there is appeal from habeas corpus, State ex rel. Hamilton v. Superior Court 56 W. 91.

Attorney not a party has no adequate remedy and prohibition will lie to prevent changing decree as to fees, State ex rel. Arthur v. Superior Court 58 W. 97.

If adequate remedy by appeal, writ will not lie even if there is want of jurisdiction,

State ex rel. Miller v. Superior Court 40 W. 555.

Writ will not lie to prevent erroneous vacation of judgment, appeal being remedy, State ex rel. Twigg v. Superior Court 34 W. 643.

Writ will not lie to prevent discharge of garnishment, State ex rel. Goupille v. Superior Court 41 W. 128.

When prohibition will not lie against error, State ex rel. Stetson & Post Mill Co. v. Superior Court 32 W. 498.

Prohibition from disregarding appeal will not be granted if appeal bond has not been filed in habeas corpus, State ex rel. Roberts v. Superior Court 32 W. 143.

Prohibition by superior court on justice will not be disturbed when doubtful if appeal adequate, State ex rel. Beet v. Kennan 25 W. 621.

Prohibition will not lie to restrain order of superior court though supersedeas given in appeal from order removing receiver and appointing another, State ex rel. Tilton v. Superior Court 7 W. 74.

Prohibition will lie to prevent receiver from taking possession of attachment levy, State ex rel. Arthur Mach. Co. v. Superior Court 7 W. 77.

Prohibition will lie to restrain superior court from proceeding after change of venue should be granted, State ex rel. Allen v. Superior Court 9 W. 668, 673.

Objection to jurisdiction must be first made in court complained of and showing must be made that there is no adequate remedy, Harris v. Brooker 8 W. 138.

Prohibition will not lie to control discretion of superior court in dismissal of appeal from justice, State ex rel. Gardner v. Superior Court 9 W. 307.

Prohibition will not lie if appeal or certiorari adequate, State ex rel. Lewis v. Hogg 22 W. 646.

Prohibition will lie to prevent trial of issue by former pleadings though no evidence was given, State ex rel. Holgate v. Superior Court 21 W. 33.

Will not issue to superior court when it has jurisdiction of subject matter though service of summons irregular, State ex rel. Vincent v. Benson 21 W. 571.

Prohibition will lie to restrain member of school board from sitting in trial of superintendent of schools when he had caused charges to be preferred and declared he would vote regardless of evidence, State ex rel. Barnard v. Board of Education 19 W. 8.

Will not lie to prohibit vacation of findings after appeal, State ex rel. Sligh v. Superior Court 19 W. 118.

Will not lie to restrain vacation of judgment beyond time allowed, State ex rel. Boyle v. Superior Court 19 W. 128.

Prohibition will lie to restrain superior court from protecting de facto officer in his duties by injunction, State ex rel. Fairbanks v. Superior Court 17 W. 12.

Prohibition will lie to restrain superior court from taking jurisdiction of vacation of judgment on impeachment of witness by his own testimony, State ex rel. Davis v. Superior Court 15 W. 339.

Costs should be taxed against party at whose instance court was proceeding unlawfully, State ex rel. Nolte v. Superior Court 15 W. 500.



Prohibition will lie to restrain depletion of fund in court pending appeal when receiver had been ordered to sell property claimed by several parties and deposit fund pending determination of cause, *State ex rel. Schwabacher Bros. & Co. v. Superior Court* 13 W. 638.

Court will be prohibited if it has not jurisdiction of subject matter nor of the person, *North Yakima v. Superior Court* 4 W. 655.

Prohibition will not lie to restrain mandate already issued without contest in superior court, *State ex rel. Nooksack Boom Co. v. Superior Court* 2 W. 9.

Prohibition will not lie to restrain the incidental issuance of injunction in excess of jurisdiction in a cause, *State ex rel. Reed v. Jones* 2 W. 662.

Supreme court will presume in the absence of showing that superior court properly refused to dismiss appeal from justice, *State ex rel. Cline v. Campbell* 5 W. 517.

Prohibition will lie to restrain superior court from enforcing judgment on bond in stay of execution when stay bond has been given on appeal, *State ex rel. McDonald v. Superior Court* 6 W. 112.

Alternative writ will be made perpetual to restrain void judgment of contempt when court has refused to vacate it, *State ex rel. Hunter v. Langhorne* 8 W. 447.

Relief must be sought of court complained of before prohibition will lie—writ will not lie against private person, *State ex rel. Gunderson v. Superior Court* 13 W. 226.

Prohibition will lie to prevent taking of jurisdiction of petition to set aside judgment rendered though by one not party to insolvency proceedings, *State ex rel. Dodge v. Langhorne* 12 W. 588.

Prohibition will not lie to prevent injunction of execution sale and transfer of

property to receiver when relator is party to injunction, *State ex rel. Schwabacher Bros. & Co. v. Superior Court* 11 W. 63.

Prohibition will not lie to restrain superior court from taking jurisdiction of estate on finding of residence of deceased, *State ex rel. Baldwin v. Superior Court* 11 W. 111.

Prohibition will lie to prevent court from proceeding in case after proper application for change of venue, *State ex rel. Rucker v. Stallcup* 11 W. 713.

Prohibition will lie to superior court to prevent proceedings regarding subject matter on appeal in supreme court, *State ex rel. Dooly v. Superior Court* 10 W. 168.

Prohibition will not issue to restrain superior court from taking jurisdiction of appeal from justice if amount less than \$200, *State ex rel. Fuller v. Superior Court* 31 W. 96.

Prohibition will not lie to restrain court from retaining jurisdiction after overruling motion to dismiss for want of jurisdiction, *State ex rel. Port Orchard Inv. Co. v. Superior Court* 31 W. 410.

Prohibition will lie to restrain superior court from punishing contempt for interference with receiver's possession superseded on appeal, *State ex rel. Oudin v. Superior Court* 31 W. 481.

Prohibition will not lie to correct error of superior court, *State ex rel. Foster v. Superior Court* 30 W. 156.

There being remedy by appeal superior court will not be prohibited from entertaining appeal from order of county commissioners establishing county road, *State ex rel. Zent v. Superior Court* 30 W. 702.

There being remedy by appeal judgment in distribution of decedent's estate will not be prohibited though court is acting without jurisdiction, *State ex rel. Carrau v. Superior Court* 30 W. 700.

**§8387. What Courts May Issue Writ—Purposes—Application for Writ.**  
§30. It may be issued by any court, except police or justices' courts, to an inferior tribunal, or to a corporation, board, or person, in all cases where there is not a plain, speedy and adequate remedy in the ordinary course of law. It is issued upon affidavit, on the application of the person beneficially interested.

Taxpayer has no cause to prohibit superior court from erroneously drawing grand jury, *State ex rel. Hanna v. Main*, 62 W. 242.

Writ will not lie to prevent vacation of assessment lien judgment nor to sustain action to adjudicate costs, *State ex rel. Cleek v. Tallman* 38 W. 132.

Writ will lie to prevent superior court allowing withdrawal of statement of facts for amendment, *State ex rel. Royal v. Linn* 35 W. 110.

Writ will not lie to prevent erroneous exercise of conceded jurisdiction, *State ex rel. Fisher v. Kennan* 35 W. 52.

Will not lie to prevent action by property owner to enjoin, canvassing election returns, etc., where it was sought to annex his land—collection of taxes and construction of street railway not emergencies, *State ex rel. West Seattle v. Superior Court* 36 W. 566.

Prohibition will not lie to prevent receiver from selling property by order of the court, *State ex rel. Newland v. Superior Court* 16 W. 444.

Supreme court will prohibit superior courts from proceeding only when beyond jurisdiction which must affirmatively appear, as in the appointment of a receiver before judgment in quo warranto against private corporation, *State ex rel. v. Superior Court* 15 W. 668; *State ex rel. Cann v. Moore* 23 W. 115; *State ex rel. Ins. Co. v. Superior Court* 14 W. 203.

Question of corporate existence cannot be raised in prohibition—corporation entitled to possession of the property until judgment, *State ex rel. v. Superior Court* 15 W. 688.

Original jurisdiction of supreme court does not extend to administrative officers, *Winsor v. Bridges* 24 W. 540.

Affidavits of respondent will not be considered if he has not answered, *State ex rel. Ins. Co. v. Superior Court* 14 W. 203.

Prohibition will not lie against re-trial when new trial granted without jurisdiction, *State ex rel. Hibbard v. Superior Court*

Court 21 W. 631.

Prohibition will lie to prevent jurisdiction as in the case of the superior court when notice of appeal from justice has not been filed before service—affidavit for

writ by attorney, State ex rel. Alladio v. Superior Court 17 W. 54.

Though prohibition has issued court may take jurisdiction if parties are different, State ex rel. Wolf v. Moore 16 W. 350.

**§8388. Writ Alternative or Peremptory—Contents of Writ.** §31. The writ must be either alternative or peremptory. The alternative writ must state generally the allegations against the party to whom it is directed, and command such party to desist or refrain from further proceedings in the action or matter specified therein until the further order of the court from which it is issued, and to show cause before such court, at a specified time and place, why such party should not be absolutely restrained from any further proceedings in such action or matter. The peremptory writ must be in a similar form, except that the words requiring the party to show cause why he should not be absolutely restrained, etc. must be omitted and a return day inserted.

Where alternative writ was granted to prevent trial by jury that had served within one year and before return jury had been changed peremptory writ was denied, State ex rel. Hart v. Superior Court 6 W. 347.

**§8389. Provisions Relating to Mandamus Apply.** §32. The provisions of this act relating to writ of mandate, apply to this proceeding.

**§8390. Return and Hearing of All Writs.** §33. Writs of review, mandate, and prohibition issued by the supreme court, or by a superior court, may, in the discretion of the court issuing the writ, be made returnable, and a hearing thereon be had at any time.

**§8391. Civil Practice Applies to All Writs.** §34. Except as otherwise provided in this act, the provisions of the Code of Procedure concerning civil actions are applicable to and constitute the rules of practice in the proceedings in this act.

Record taken up by bill or statement, Taylor v. Tacoma 15 W. 92.

**§8392. Appeals.** §35. From a final judgment in the superior court, in any such proceeding, an appeal shall lie to the supreme court.

Order to prosecuting attorney in mandamus proceedings to institute quo warranto proceedings appealable, State ex rel. Prosecuting Attorney v. Union Savings Bank 80 W. 48.

## PUBLIC CORPORATIONS.

Garnishment authorized §8026.

State, how judgment paid §6263.

School districts, corporate powers, etc., Townships, actions by and against §7100-§4905.

State, actions against §6260.

**§8393. Public Corporations May Maintain Actions.** §661.—661. An action at law may be maintained by any county, incorporated town school district or other public corporation of like character in this state, in its corporate name, and upon a cause of action accruing to it in its corporate character and not otherwise, in either of the following cases,

1. Upon a contract made with such public corporation.
2. Upon a liability prescribed by law in favor of such public corporation.
3. To recover a penalty or forfeiture given to such public corporation.
4. To recover damages for an injury to the corporate rights or property of such public corporation.

Townships liable for defects in roads, Nipges v. Mountain View Twp. 100 W. 268.

Townships liable for injuries on roads, Orrock v. South Moran Twp. 97 W. 144.

Corporate powers of counties, §1468; townships, §§7100-11, 7100-98; school districts, §4978.

Service of summons when no officers or they cannot be found, §8441.

Judgment by confession against, §8103.

School district is liable for injury to child on dangerous exercise ladder, Howard v. Tacoma School Dist. No. 10, 88 W. 167.

School district liable for negligence, Redfield v. School District 48 W. 85.

No action allowed against a county on tort or contract without first being presented, Hoexter v. Judson 21 W. 646.

The county is proper party to actions arising from acts of county officers—treasurer held not to be proper party defendant to recover tax paid under protest, id; but see State ex rel. Porter v. Headlee 18 W. 220.

City can be sued only in county where situated, North Yakima v. Superior Court 4 W. 655.

County is liable for personal injuries from defective bridge, Kirtley v. Spokane County 20 W. 111.

Proper officers to bring action discussed,



State ex rel. Atty. Genl. v. Seattle Gas Co. 28 W. 288.

action will be presumed and need not be alleged, Seattle v. McDonald 26 W. 98.

Power of corporation counsel to bring

**§8394. Actions Against Public Corporations. §662.—622.** An action may be maintained against a county or other of the public corporations mentioned or described in the preceding section either upon a contract made by such county, or other public corporation in its corporate character, and within the scope of its authority or for an injury to the rights, of the plaintiff arising from some act or omission of such county or other public corporation.

County held responsible for acts of deputy sheriff though statute absolves county, Arishin v. King County 103 W. 176.

Is not repealed by school code, §4720, Kelley v. School District No. 71 102 W. 343.

Liability for duties imposed by later statutes, Bergen v. Lewis County 95 W. 499.

Mandamus either before or after judgment, when, State ex rel. Dyer v. Middle Kittitas Irr. Dist. 56 W. 488.

**§8395. Verification of Pleadings by Corporation. §663.—663.** In such actions the pleadings of the public corporation shall be verified by any of the officers representing it in its corporate capacity in the same manner as if such officer was a defendant in the action or by the agent or attorney thereof as in ordinary actions.

Verification of pleadings, §8383.

**§8396. Judgment—How Satisfied. §664.—664.** If judgment be given for the recovery of money or damages against such county or other public corporation no execution [shall issue] thereon for the collection of such money or damages, but such judgment in such respect shall be satisfied as follows:

1. The party in whose favor such judgment is given may at any time thereafter, when execution might issue on a like judgment against a private person, present a certified transcript of the docket thereof to the officer of such county or other public corporation who is authorized to draw orders on the treasury thereof.

2. On the presentation of such transcript such officer shall draw an order on such treasurer for the amount of the judgment, in favor of the party for whom the same was given. Thereafter such order shall be presented for payment and paid with like effect and in like manner as other orders upon the treasurer of such county or other public corporation.

3. The certified transcript herein provided for shall not be furnished by the clerk, unless at the time, an execution might issue on such judgment, if the same were against a private person, nor until satisfaction of the same judgment in respect to such money or damages be acknowledged as in ordinary cases. The clerk shall include in the transcript the memorandum of such acknowledgment of satisfaction and the entry thereof. Unless the transcript contain such memorandum, or [no] order upon the treasurer shall issue thereon.

Mandamus, receiver and supplementary proceedings concurrent against State Dental Board, Stern v. Board 50 W. 100.

Warrant drawn in favor of attorney of infant is proper, State ex rel. Lane v. Ballinger 41 W. 23.

On presentation of transcript warrant must issue though funds not collected in condemnation by city, State ex rel. Donofrio v. Humes 34 W. 347.

Transcript of execution docket is sufficient, Smith v. Ormsby 20 W. 396.

Limit of indebtedness will not prevent issuance of warrant on judgment for personal injuries or any judgments and its payment in order with necessary municipal

expenses, Lorence v. Bean 18 W. 36; Smith v. Ormsby 20 W. 396.

Mandamus will lie to compel warrant drawn, State ex rel. Porter v. Headlee 18 W. 220.

Mandamus will lie to compel issuance of warrant, Chapin v. Port Angeles 31 W. 535.

That justice of the peace has failed to file treasurer's receipt is no excuse for failure of county auditor to draw warrant for justice's salary, id.

Warrants are collected by mandamus to compel officers to do duty and legality of warrant may be tried, Cloud v. Town of Sumas 9 W. 399.

**§8397. Attachment of the Person of Officer Refusing. §665.—665.** Should the proper officer of said corporation fail or refuse to satisfy said judgment, as in the preceding section provided, an attachment may be issued to compel his performance of said duty.

## QUO WARRANTO.

Rules of supreme court §7338s.

**§8398. Information Against Usurpation of Public Functions. §702.—702.** An information may be filed against any person or corporation in the following cases:

1. When any person shall usurp, intrude into or unlawfully hold or exercise any public office or franchise within the state, or any office in any corporation created by the authority of the state.

2. When any public officer shall have done or suffered any act, which, by the provisions of law shall work a forfeiture of his office.

3. When several persons claim to be entitled to the same office or franchise, one information may be filed against any or all such persons in order to try their respective rights to the office or franchise.

4. When any association or number of persons, shall act within this state as a corporation without being legally incorporated.

5. Or where any corporation do or omit acts which amount to a surrender or a forfeiture of their rights and privileges as a corporation or where they exercise powers not conferred by law.

Contest of election county officers, §1965.

Writ issued against bank without sufficient capital, State ex rel. Giebert v. Prosecuting Attorney 92 W. 484.

Writ in favor of foreman of construction work of city under civil service, State ex Powell v. Fassett, 69 W. 555.

Wharves on line of street or on city property is not exercise of franchise and quo warranto will not lie, State ex rel. Port Angeles v. Morse 56 W. 654.

Owner of one-half the stock of corporation assumed to act for it without authority destroying its business held writ will lie, State ex rel. Conlan v. Oudin & Bergman Co. 48 W. 196.

Quo warranto to test corporation election should be directed to persons exercising functions, State ex rel. Pros. Atty. v. South Park 34 W. 162.

Mayor of city has not the proper interest to institute quo warranto against a councilman, State ex rel. Smith v. Mills 2 W. 566.

Quo warranto may be instituted against councilman though council has declared him qualified, State ex rel. Blake v. Morris 14 W. 262.

If officer is qualified after action commenced proceedings will abate, State ex rel. Colner v. Wickersham 16 W. 161.

Quo warranto is remedy where mayor under charter removes appointive officer for cause or otherwise, State ex rel. Heilbron v. Van Brocklin 8 W. 557; Kimball v. Olmstead 20 W. 629.

Interest of officer in contract—non-feasance—damages in quo warranto, id.

County commissioners charged with collusion in issuance of liquor licenses, illegal appointment of purchasing agent, overpaying themselves, id.

"Person" includes corporation. Does not the remedy follow the rem? State ex rel. Atty. Genl. v. Seattle Gas Co. 28 W. 488.

What officers may institute or direct action to be instituted, id.

Stockholders of corporation may institute action against officers, State ex rel. Mitchell v. Horan 22 W. 197.

Attempt at impeachment of county commissioners for malfeasance, State ex rel. Whitney v. Friars 10 W. 348.

Title to office cannot be tried in equitable action for injunction, Mullen v. Tacoma 16 W. 82.

Officer removed from office has remedy by quo warranto, State ex rel. Niggle v. Kirkwood 15 W. 298.

Quo warranto to obtain office of town marshal, State ex rel. Tremblay v. McQuade 12 W. 554.

**§8399. Who May File Information. §703.—703.** The information may be filed by the prosecuting attorney in the superior court of the proper county, upon his own relation, whenever he shall deem it his duty to do so, or shall be directed by the court or other competent authority; or by any other person on his own relation, whenever he claims an interest in the office, franchise or corporation which is the subject of the information.

Plain case necessary to order directing quo warranto—order directing prosecuting attorney to investigate not final and not appealable, State ex rel. Cummings v. Superior Court 91 W. 81.

Discretion to order quo warranto vested in the court—interest of petitioner immaterial—writ against a bank without sufficient capital, State ex rel. Giebert v. Prosecuting Attorney 92 W. 484.

Private person must show interest or require prosecuting attorney to act, State ex rel. White v. Point Roberts etc. Co. 42 W. 409.

**§8400. Contents of Complaint. §704.—704.** The information shall consist of a plain statement of the facts which constitute the grounds of the proceedings, addressed to the court.

Information for malfeasance in office must be definite as indictment, State ex rel. Whitney v. Friars 10 W. 348, but see State ex rel. Heilbron v. Van Brocklin 8 W. 557.

Information to oust official alleging termination of his tenure and appointment, acceptance and qualification of relator sufficient, State v. McQuade, 12 W. 554.



**§8401. Complaint Against Officer Must Show Who Entitled — Damages.**

§705.—705. Whenever an information shall be filed against a person for usurping an office, by the prosecuting attorney, he shall also set forth therein the name of the person rightfully entitled to the office, with an averment of his right thereto; and when filed by another person he shall show his interest in the matter, and he may claim the damages he has sustained.

**§8402. Notice—Answer—Default.** §706.—706. Whenever an information is filed, a notice signed by the relator shall be served and returned as in other actions. The defendant shall appear and answer or suffer default, and subsequent proceeding be had as in other cases.

**§8403. Judgment for Office Must Be on Rights of the Parties—Damages.** §707.—707. In every case wherein the right to an office is contested judgment shall be rendered upon the rights of the parties, and for the damages the relator may show himself entitled to, if any, at the time of the judgment.

De jure officer having recovered judgment against de facto officer cannot recover of city, *Samuels v. Town of Harrington* 43 W. 603.

Appellant from ouster judgment entitled to stay of proceedings, *State v. Sachs*, 3 W. 96; see *Fawcett v. Sup. Ct.*, 15 W.

342.

Judgment of ouster divests of all official authority—no need of further process—appeal—contempt, *Fawcett v. Sup. Ct.*, 15 W. 342.

Appeal does not entitle appellant to office pending appeal—jurisdiction, *State v. Sup. Ct.*, 15 W. 376.

**§8404. Effect of Judgment for Relator.** §708.—708. If judgment be rendered in favor of the relator he shall proceed to exercise the functions of the office, after he has been qualified as required by law, and the court shall order the defendant to deliver over all books and papers in his custody or within his power, belonging to the office from which he has been ousted.

Judgment in favor of relator ousts respondent and it cannot be superseded, *Fawcett v. Superior Court* 15 W. 342.

**§8405. Judgment Enforced by Attachment.** §709.—709. If the defendant shall refuse or neglect to deliver over the books and papers pursuant to the order, the court or judge thereof shall enforce the order by attachment and imprisonment.

**§8406. Damages Recoverable in Separate Action.** §710.—710. When judgment is rendered in favor of the plaintiff he may, if he has not claimed his damages in the information, have his action for the damages at any time within one year after the judgment.

**§8407. Judgment of Ouster of Franchise or Office in Corporations—Costs.** §711.—711. Whenever any defendant shall be found guilty of any usurpation or of intrusion into or unlawfully exercising any office or franchise within this state, or any office in any corporation created by the authority of this state or when any public officer thus charged shall be found guilty of having done or suffered any act which by the provisions of the law shall work a forfeiture of his office, or when any association or number of persons shall be found guilty of having acted as a corporation without having been legally incorporated, the court shall give judgment of ouster against the defendant or defendants and exclude him or them from the office, franchise or corporate rights, and in case of corporations that the same shall be dissolved, and the court shall adjudge costs in favor of the plaintiff.

**§8408. Remedy Against Usurpers of Corporate Rights.** §712.—712. If judgment be rendered against any corporation, or against any person claiming to be a corporation, the court may cause the costs to be collected by executions against the persons claiming to be a corporation or by attachment against the directors or other officers of the corporation, and shall restrain the corporation, appoint a receiver of its property and effects, take an account and make a distribution thereof among the creditors. The prosecuting attorney shall immediately institute proceedings for that purpose.

Proceedings by interested party—receiver without showing of necessity, *Conlan v. Oudin* 49 W. 240.

Receiver appointed only after judgment, *State ex rel. v. Superior Court* 15 W. 668.

**§8409. Recovery of Forfeited Property.** §713.—713. Whenever any property shall be forfeited to the state for its use, the legal title shall be deemed to be in the state from the time of the forfeiture, and an information may be filed by the prosecuting attorney in the superior court for the recovery.

rey of the property, alleging the ground on which the recovery is claimed, and like proceedings and judgment shall be had as in civil action for the recovery of the property.

**§8410. Costs. §714.—714.** When an information is filed by the prosecuting attorney he shall not be liable for the costs, but when it is filed upon the relation of a private person such person shall be liable for costs, unless, the same are adjudged against the defendant.

**§8411. Information to Annul Deed or Act of Public Officer. §715.—715.** An information may be prosecuted for the purpose of annulling or vacating any letters patent, certificate or deed, granted by the proper authorities of this state when there is reason to believe that the same were obtained by fraud or through mistake or ignorance of a material fact, or when the patentee or those claiming under him have done or omitted an act in violation of the terms on which the letters, deeds or certificates were granted, or have by any other means forfeited the interests acquired under the same.

**§8412. Who May File—Judgment. §716.—716.** In such cases, the information may be filed by the prosecuting attorney upon his relation or by any private person upon his relation showing his interest in the subject matter; and the subsequent proceeding, judgment of the court and awarding of costs, shall conform to the above provisions and such letters patent deed or certificate shall be annulled or sustained, according to the right of the case.

### RECEIVERS.

Bank receiverships restricted §319.  
Execution, proceedings supplementary §7954.

Receivers cities 3rd and 4th class on dissolution §922.

Supplementary—AN ACT in relation to receivers. Approved February 26, 1891. Laws '91 p 90.

**§8413. Receiver Defined. §1.** A receiver is a person appointed by a court or judicial officer to take charge of property during the pendency of a civil action, or proceeding, or upon a judgment, decree, or order therein, and to manage and dispose of it as the court or officer may direct.

Sale by receiver cannot be impeached claiming corporation solvent, Fryar v. Hazlewood Holstein Farms 97 W. 78.

Election of, in dissolution of cities of third and fourth classes, §922.

Service of summons on, §8439.

Notice of application in proceedings supplementary, §7954.

In logger's liens, §9690; in attachment, §7393.

Sheriff cannot act in insolvency, §1814.

Corporations shall pay certain preferred labor liens, §9737.

In proceedings supplementary to execution, §7934.

Order appointing receiver without notice void—writ of assistance to put receiver in possession void, State ex rel. Ridgley v. Superior Court 86 W. 584.

Compensation charged to party appointing when for most part unsuccessful—discretion, Lohman v. Claussen 55 W. 408.

Ex parte appointment of receiver of mortgaged chattels only temporarily valid—no appeal from order vacating, Libert v. Unfried 47 W. 182.

Part of receiver's certificates allowed in payment of purchase price and others pro-rate with creditors, Nisbet v. Great Northern Clay Co. 41 W. 107.

Property vests in a receiver and a repeal of the law authorizing his appointment does not destroy receivership, Ewing v. Van Wagenen 6 W. 39.

A receiver is a necessary party in an action to foreclose a lien on partnership property, Denny v. Cole 22 W. 372.

**§8414. May Be Appointed. §193.—193.** A receiver may be appointed by the court in the following cases:

1. In an action by a vendor to vacate a fraudulent purchase of property, or by a creditor to subject any property or fund to his claim.

2. In an action between partners, or other persons jointly interested in any property or fund.

3. In all actions where it is shown that the property, fund or rents and profits in controversy are in danger of being lost, removed or materially injured.

4. In an action by a mortgagee for the foreclosure of a mortgage and the sale of the mortgaged property, when it appears that such property is in danger of being lost, removed, or materially injured; or when such property is insufficient to discharge the debt, to secure the application of the rents and profits accruing, before a sale can be had.



5. When a corporation has been dissolved, or is insolvent, or is in imminent danger of insolvency, or has forfeited its corporate rights.

6. And in such other cases as may be provided for by law, or when, in the discretion of the court it may be necessary to secure ample justice to the parties, provided that no party or attorney or other person interested in an action, shall be appointed receiver therein.

Trustees voting own salary more than income, etc., receiver properly granted, *Kahle v. Industrial Loan & Inv. Co.* 103 W. 273.

Ex parte orders allowing attorney's fees and settling receiver's accounts void, *Colkett v. Hammond* 101 W. 416.

Receiver appointed court refused to enjoin foreclosure of chattel mortgage in another county, *Schwabacher Bros. & Co. v. Schade & P. Co.* 99 W. 271.

Receiver denied for foreign corporation dissolved with receiver in foreign jurisdiction, *Droppelman v. Illinois Surety Co.* 95 W. 476.

Services rendered proper basis rather than percentage payment of receiver, *Crawford v. Seattle, R. & S. R. Co.* 102 W. 386.

Simple contract creditor cannot have receiver for a natural person, *Blum v. Rowe* 98 W. 683.

Action of account against corporation does not authorize appointment of receiver *Garys Harbor Com'l Co. v. Fifer* 97 W. 380.

Receiver allowed mortgagee to apply rents to delinquent taxes, *Newman v. Van Nortwick* 95 W. 489.

Ex parte interlocutory order approving report and allowing pay to receiver valid—more than one—half amount collected allowed—no costs against receiver personally, *Pacific Coast Coal Co. v. Esary* 92 W. 203.

Receiver appointed pendente lite where co-tenant was gathering crops and refused to account, *Womach v. Sandygren* 94 W. 256.

First action brought excludes others—prohibition, *State ex rel. Fidelity & Dep. Co. v. Superior Court* 87 W. 498.

Receivership is not bankruptcy, *In re Commonwealth Lum. Co.* 223 Fed. 667.

Facts did not warrant appointment—discretion of trial court will be reviewed, *Union Boom Co. v. Samish Boom Co.* 33 W. 144.

Vendor in conditional sale may apply to have receiver surrender property—order dismissing appealable, *Sumner Iron Wks. v. Wolten* 61 W. 689.

Partner excluded, receiver properly appointed, *Whipple v. Lee* 46 W. 266.

Public board's funds as State Dental Board, *Stern v. Board* 50 W. 100.

Receiver of corporation cannot be appointed at instance of stockholder claiming to hold majority, but stock in dispute, and officers refuse to recognize stockholder, *Belding v. Washington Cornice Co.* 36 W. 549.

One partner denied copartnership, against preponderance of evidence receiver was properly appointed, *Redding v. Anderson* 37 W. 209.

Receiver in foreclosure of chattel mortgage warranted by the facts, *Euphrat v. Morrison* 39 W. 311.

Simple contract creditor may have re-

ceiver under par. 5—showing made and necessary, *Davis v. Edwards* 41 W. 480.

Receiver properly appointed but superseded by bond, bond continued in lieu of receiver, *Oudin & Bergman Etc. Co. v. Conlan* 38 W. 134.

A receiver cannot be appointed of mortgaged property, *Norfor v. Busby* 19 W. 450.

An assignment for the benefit of creditors of an insolvent corporation cannot defeat the appointment of a receiver, *Olson v. Bank of Tacoma* 15 W. 148.

Receiver may be appointed in the foreclosure of liens on vessels, *Washington Iron Works Co. v. Jensen* 3 W. 584.

The assets of an insolvent corporation is a trust fund for the benefit of creditors and no preference of creditors or action of the corporation to defeat the purpose is valid, and a receiver will take the property against all parties, *Thompson v. Huron Lumber Co.* 4 W. 600.

Receiver may be appointed for corporation for other purposes than winding it up as an insolvent concern, *Shuey v. Holmes* 20 W. 13.

Mandamus will lie to compel a superior court to take jurisdiction by receiver of an insolvent corporation and will retain jurisdiction until such corporation is adjudged bankrupt, *State ex rel. Strohl v. Superior Court* 20 W. 545.

A creditor of an insolvent corporation may enforce his rights through a receiver instead of being required to sue the stockholders, *New York Nat. Ex. Bank v. Metropolitan Bank* 28 W. 553.

Refusal of receiver for corporation sustained, *Ridpath v. Sans Poil Etc. Co.* 26 W. 427.

Allowance for services of receiver will not be disturbed unless clearly inadequate, *Van Brocklin v. Queen City Printing Co.* 21 W. 447.

Receiver of corporation does not take property attached, *State ex rel. Hunt v. Superior Court* 8 W. 210.

Receivership cannot be attacked for fraud by simple motion without leave of court, *Wooding v. J. Wooding & Co.* 10 W. 531.

Receiver should not be appointed in action for partnership accounting unless there is showing of insolvency, *Wales v. Dennis* 9 W. 308.

Receiver for corporation in failing circumstances sustained—judgment against vendor pending sale of property—defense when receiver appointed ex parte, *White House v. Point Defiance Ry.* 9 W. 558.

Actions pending may be continued without substituting receiver, *Dunlap v. Rauch* 24 W. 620.

Appointment of temporary receiver ex parte is authorized, *Cole v. Price* 22 W. 18.

Receiver cannot be appointed without notice, *Larsen v. Winder* 14 W. 109.

Corporation mortgagor is entitled to receiver though it has turned elevator system over to mortgagee and mortgagee placed one of mortgagor's principal officers

who had managed with loss in charge, *Sibson v. Hamilton & Rourke Co.* 21 W. 362.

When creditor's bill may be maintained against receiver—leave to sue, *Sligh v. Shelton & S. W. Ry.* 20 W. 16.

Appointment is discretionary and inherent in the court in case of corporation—answer to defeat appointment must be complete, *Cameron v. Groveland Imp. Co.* 20 W. 169.

Bond by one partner to take property from receiver binds sureties unless other partner did not consent to bond and included all assets as well as property turned over by receiver, *Larsen v. Winder* 20 W. 419.

Receiver cannot be appointed in foreclosure of mortgage, *Balfour-Guthrie Inv. Co. v. Geiger* 20 W. 579.

Appointment of receiver cannot be attacked collaterally, *Carroll v. Pacific Nat. Bank* 19 W. 639.

Receiver should not be appointed for realty held by defendant unless plaintiff makes strong case *Spokane v. Amsterdamsch Trustees Kantoor* 18 W. 81.

Action to establish right to rents may be brought though receiver in possession of realty, *Griffith v. Burlingame* 18 W. 429.

When title to realty claimed by both parties receiver for rents and profits may be appointed, *Sengfelder v. Hill* 16 W. 355.

Receivership acquiesced in cannot be impeached—priority of expenses in railway receivership, *Manhattan Trust Co. v. Seattle Coal & Iron Co.* 16 W. 499, but see *S. C.* 19 W. 493.

Consideration in fixing compensation of receiver—no fixed rule, *Thompson v. Huron Lumber Co.* 5 W. 527.

Leave to sue is addressed to discretion of the court even in the case of mortgagee, *Meeker v. Sprague* 5 W. 242.

Receiver's possession is superior to right of mortgagee accruing after receiver appointed—validity of appointment will not be inquired into on appeal in incidental proceeding, *Radebaugh v. Tacoma Etc. Ry. Co.* 8 W. 570.

Not necessary for receiver to obtain leave to sue—confessions of judgment by insolvent corporation invalid—attachments invalid, *Compton v. Schwabacher Bros. & Co.* 15 W. 306.

Receiver of railroad is not liable for breach of contract to carry passenger prior to appointment, *Casey v. Northern Pacific Ry.* 15 W. 451.

Receiver may sue without leave of court, *Hardin v. Sweeney* 14 W. 129.

Receivership does not prevent action on promissory note executed prior to receivership, *Allen v. Olympia Light & P. Co.* 13 W. 307.

When trustee is guilty of fraud is in-

solvent and is adverse to bondholders receiver may be appointed, *Clay v. Selah Valley Irrigation Co.* 14 W. 543.

Receiver is not liable for profits he could have made but did not make because he had not funds—is not liable for loss unless he has done unauthorized act—sale to himself—compensation, *Chandler v. Cushing-Young Shingle Co.* 13 W. 89.

Receiver is not liable for refusal to perform executory contract, *Scott v. Rainier Power & Ry. Co.* 13 W. 108.

Claims against receiver may be determined by petition in receivership or independent suit *Blake v. State Savings Bank* 12 W. 619.

Receiver wrongfully appointed is allowed nothing for his services but is allowed expenses and attorneys' fees—attorney's fees excessive, *Brundage v. Home Etc. Assn.* 11 W. 288.

Proofs not mere allegations of necessity for receivership of mortgaged property in possession of mortgagee must be made, *Brundage v. Home Etc. Assn.* 11 W. 278.

Receiver must bring independent action for property unless it has been taken from him—execution may issue during receivership—receiver must give bond for injunction, *Cherry v. Western Washington Etc. Co.* 11 W. 586.

Receiver is liable if he pays money according to conclusions and contrary to decree, *Bartlett v. Reichnecker* 11 W. 692.

Receivership cannot be attacked in action by receiver for property of insolvent corporation—proof of value of assets in appointment of receiver, *Smith v. Hopkins* 10 W. 77.

One paying labor claims against logs on the advice of the court that they are preferred under a receivership appointed under the condition that all claims for labor should be paid in full is entitled to preference in the receivership for payment so made, *Davis v. Foster* 29 W. 363.

Temporary receiver may be appointed without notice in foreclosure of chattel mortgage—notice, *Haggard v. Sanglin* 31 W. 165.

Dual appointment of receiver by different courts is unwarranted, *Fernald v. Spokane & B. C. T. & T. Co.* 31 W. 219.

Facts held to warrant appointment of receiver in foreclosure of mortgage on telephone company's property, *Fernald v. Spokane Etc. Co.* 31 W. 672.

Where accounts are closed and cause at an end receiver should be discharged, *State ex rel. Oudin v. Superior Court* 31 W. 481.

Funds of individual community and partnership in hands of receiver are all liable for expenses, *Cannon v. Snipes* 32 W. 243.

Mortgagee not entitled to receiver, §7530, *Norfor v. Busby* 19 W. 450.

§8415. Oath and Bond. §194.—194. Before entering upon his duties, the receiver must be sworn to perform them faithfully, and with one or more sureties, approved by the court, execute a bond to such person as the court may direct, conditioned that he will faithfully discharge the duties of receiver in the action, and obey the orders of the court therein.

§8416. Bailee or Trustee May Deposit. §195.—195. When it is admitted by the pleading or examination of a party, that he has in his possession, or under his control, any money, or other thing capable of delivery, which, being the subject of the litigation, is held by him as trustee for another party, or which belongs, or is due to another party, the court may order the



same to be deposited in court, or delivered to such party, with or without security, subject to the further direction of the court.

**Deposit and substitution of new party.** This section applies to the property regardless of person by whom it is held, §8279.

Attachment of fund in court, §7397.

Action by bailee or trustee, §8282.

State ex rel. Byers v. Superior Court 28 W. 403.

**§8417. Court May Order Deposit—Execution.** §196.—196. Whenever, in the exercise of its authority, a court shall have ordered the deposit or delivery of money or other thing, and the order is disobeyed, the court, besides punishing the disobedience as for contempt, may make an order requiring the sheriff to take the money or thing, and deposit or deliver it, in conformity with the direction of the court.

Defendant may surrender and have real property unless parties in court, Weisbach v. Arnold 3 W. T. 111.

**§8418. Deposit Not to Be Loaned.** §197.—197. Money deposited, or paid into court in an action, shall not be loaned out, unless, with the consent of all parties having an interest in, or making claim to the same.

**§8419. Receiver's Powers.** §198.—198. The receiver shall have power, under control of the court, to bring and defend actions, to take and keep possession of the property, to receive rents, collect debts, and generally to do such acts respecting the property, as the court may authorize.

Leave to sue receiver will be presumed on appeal Payson v. Jacobs 38 W. 203; Sligh v. Shelton S. W. Ry. 20 W. 16; and see, Compton v. Schwabacher Bros., 15 W. 306.

Defendant is not entitled to a non-suit for failure of the receiver to give in evidence order appointing him when he has testified that he is such receiver, Titlow v. Cascade Oatmeal Co. 15 W. 652.

Receiver, in applying for temporary restraining order against stranger to action in which he was appointed, must give injunction bond, Cherry v. Western, etc., Co., 11 W. 586.

Where decree inconsistent with findings and conclusions and receiver pays under conclusions without having decree corrected, he is liable as under decree, Bartlett v. Reichenacker 11 W. 692.

Deed to receiver does not affect prior mortgage, Meeker v. Sprague, 5 W. 242.

Receiver who sells assets for cash at full value to firm of which he is manager not liable where circumstances justified sale, Chandler v. Cushing-Young Co., 13 W. 89.

Receiver may refuse to carry out executory contract of corporation, Scott v. Rainier Power Co., 13 W. 108.

Receiver does not ratify void lease by accepting rents when ignorant of facts, Groveland Imp. Co. v. Farmers Supply Co., 25 W. 344.

Receiver takes no title to property in actual custody of sheriff under attachment when sheriff and lienor not parties to action in which receiver appointed, State ex rel. Hunt v. Sup. Ct. 8 W. 210; State ex rel. Rice v. Sup. Ct., 8 W. 659; State v. Graham, 9 W. 528.

**§8420. Part of Claim Admitted—Execution May Be Had.** §199.—199. When the answer of the defendant admits part of the plaintiff's claim to be just, the court, on motion, may order the defendant to satisfy that part of the claim, and may enforce the order by execution or attachment.

Attaching creditor may have prohibition to prevent receiver from taking property, State v. Sup. Ct., 7 W. 77. See State v. Sup. Ct., 11 W. 63.

When appointment of receiver is unwarranted, he is entitled to no compensation for services, but should be allowed proper disbursements, including attorney's fee, Brundage v. Home, etc., Assn., 11 W. 288.

Claims against receiver determined in original action or independent suit, in discretion of court, Blake v. State Sav. Bank, 12 W. 619.

Subsequent appointment of trustee in bankruptcy does not deprive receiver of rights, Springer v. Ayer, 50 W. 642.

Permission to sue receiver in discretion of court, Meeker v. Sprague, 5 W. 242. See Kidder v. Beaver, 33 W. 641.

Receiver may disaffirm acts of insolvent corporation, and set aside fraudulent transfers, Wash. Mill Co. v. Sprague Lum. Co., 19 W. 165.

Receiver may enforce stock subscriptions, Cole v. Satsop, 9 W. 487; Elderkin v. Peterson, 8 W. 674.

Where receiver defends for benefit of creditors, creditors may not intervene with same defense, Springer v. Ayer, 50 W. 642.

Receiver's appointment cannot be attacked in his action to recover property to which he is entitled, Smith v. Hopkins, 10 W. 77.

Creditor not party to action cannot appear without leave and move to vacate order appointing receiver, Wooding v. Wooding 10 W. 531.

Subsequent attachment does not give priority over receiver, State v. Sup. Ct., 11 W. 63.

## REPLEVIN.

Variance allowed in proof of title §8335.

**§8421. Immediate Delivery of Personal Property. §142.—142.** The plaintiff in an action to recover the possession of personal property may, at the time of issuing the summons, or at any time before answer, claim the immediate delivery of such property as herein provided.

Search warrants for stolen or embezzled property, §9357.

Judgment in case property cannot be returned, §8527.

Variance shall not defeat action, §8335.

Execution in, §7831.

Service by publication, §8441.

Replevin in justice court, §9614.

Allegation of ownership by defendant is denial and plaintiff must make proof, *Moore v. Marsh* 59 W. 151.

Property confused without fault writ will not lie, *Meyers v. Gerhart* 54 W. 657.

Property sold conditionally, amount due and delivery of property in dispute, *Standard Furniture Co. v. Burrows* 59 W. 455.

Will lie against person who has wrongfully disposed of the property without knowledge of the plaintiff-tender, *Andrews v. Hoeslich* 47 W. 220.

Entire contract may be tried—counterclaim, *Gilbert Co. v. Husted* 50 W. 61.

Alternative judgment entitles possession to part, *Springer v. Ayer* 50 W. 642.

Amendment of complaint to show venue—demand on husband good, *Standard Furniture Co. v. Anderson* 38 W. 582.

Complaint held action for conversion and not replevin—situs—possession. *Phillippos v. Mihran* 38 W. 402.

Under general denial defendant may show title and right to possession—plaintiff failing property must be returned, *Harvey v. Ivory* 35 W. 397.

Replevin will lie against creditor of insolvent vendee, *Kulzer v. Simonton* 41 W. 587.

House sold on conditional sale subject or replevin, *Page v. Urick* 31 W. 601.

Allegation of situs of property is jurisdictional *Stiles v. Jones* 2 W. T. 194.

Even though the action is alternative it is not error for the instructions to assume that demand is necessary, *Dow v. Dempsey* 21 W. 86.

If verdict for defendant no judgment can be had against sureties on plaintiff's bond, *Eidson v. Woolery* 10 W. 225.

If plaintiff dismisses action after defendant gives bond he may still maintain action for damages, *Meigs v. Keach* 1 W. T. 305.

Plaintiff must have actual possession or

**§8422. Grounds of Affidavit for. §143.—143.** When a delivery is claimed, an affidavit shall be made by the plaintiff, or by some one in his behalf, showing:

1. That the plaintiff is the owner of the property claimed (particularly describing it;) or is lawfully entitled to the possession thereof, by virtue of a special property therein, the facts in respect to which shall be set forth;



2. That the property is wrongtully detained by defendant.
3. That the same has not been taken for a tax, assessment, or fine pursuant to a statute, or seized under an execution or attachment, against the property of the plaintiff; or if so seized, that it is by law exempt from such seizure. And,
4. The actual value of the property.

Res. in county—demand—defendant garnished—finding of value of property, *Armour v. Seixas* 80 W. 181.

Mortgagee may maintain replevin, *Bancroft-Whitney Co. v. Gowan* 24 W. 66.

Replevin cannot be maintained against one in adverse possession for logs severed from realty, *Clarke v. Clyde* 25 W. 661.

Replevin will not lie against corporate officer regularly in possession, *Standard Gold Mining Co. v. Byers* 31 W. 100.

#### §3423. Bond of Plaintiff and Levy by Sheriff—Service on Defendant.

§144.—144. Upon the receipt of the affidavit, and a bond to the defendant, executed by one or more sufficient sureties, approved by the sheriff, to the effect that they are bound in double the value of the property, as stated in the affidavit, for the prosecution of the action, for the return of property to the defendant, if return thereof be adjudged, and for the payment to him of such sum as may, for any cause, be recovered against the plaintiff, the sheriff shall forthwith take the property described in the affidavit, if it be in the possession of the defendant or his agent, and retain it in his custody. He shall also, without delay, serve on the defendant a copy of the affidavit and bond, by delivering the same to him personally, if he can be found, or his agent, from whose possession the property is taken; or, if neither can be found, by leaving them at the usual place of abode of either, with some person of suitable age and discretion; or, if neither have any known place of abode, by putting them in the postoffice, directed to the defendant, at the postoffice nearest his place of residence.

Bond liable only to extent of judgment, *Ihrig v. Bussell*, 68 W. 70.

judgment is for defendant, *Bancroft-Whitney Co. v. Gowan* 24 W. 66.

Under §§8425, 8430, an action for conversion may be maintained against an officer holding property in an action to which claimant had not been made party, *Nasser v. Gaston*, 70 W. 685.

Defendant though he has given counter-bond may have action for breach, *Meigs v. Keach* 1 W. T. 305.

Liability on bond is limited to action in which bond is given, *Boyer v. Fowler* 1 W. T. 102.

Judgment cannot be given on bond if

§8424. Plaintiffs Sureties Must Justify if Defendant Does Not Give Counter-Bond. §145.—145. The defendant may, within three days after the service of a copy of the affidavit and bond, give notice to the sheriff that he excepts to the sufficiency of the sureties; if he fail to do so, he shall be deemed to have waived all objections to them. When the defendant excepts, the sureties shall justify on notice, in like manner as bail on arrest, and the sheriff shall be responsible for the sufficiency of the sureties until the objection to them is either waived as above provided, or until they shall justify, or new sureties shall be substituted and justify. If the defendant except to the sureties, he cannot reclaim the property, as provided in the next section.

§8425. Counter-bond May Be Given Within Three Days. §146.—146. At any time before the delivery of the property to the plaintiff, the defendant may, if he do not except to the sureties of the plaintiff, require the return thereof, upon giving to the sheriff a bond executed by one or more sufficient sureties to the effect that they are bound in double the value of the property, as stated in the affidavit of the plaintiff, for the delivery thereof to the plaintiff, if such delivery be adjudged, and for the payment to him of such sum as may, for any cause, be recovered against the defendant. If a return of the property be not so required within three days after the taking and service of notice to the defendant, it shall be delivered to the plaintiff, except as provided in section one hundred and fifty-one.

Action maintained on redelivery bond because property deteriorated—partial return, *Hallidie Mach. Co. v. Whidby Island Co.* 73 W. 403.

Bond signed by attorney without authority binds principal and sureties—duty to redeliver though third party interferes, *Arthur v. Sherman* 11 W. 254.

§8426. Defendant's Sureties Must Justify or Property Delivered to Plaintiff. §147.—147. The defendant's sureties, upon a notice to the plaintiff or his attorney, of not less than two, or more than six days, shall

justify in the same manner as bail upon arrest; upon such justification the sheriff shall deliver the property to the defendant. The sheriff shall be responsible for the defendant's sureties until they justify, or until justification is completed, or expressly waived, and may retain the property until that time; but if they, or others in their place, fail to justify at the time and place appointed, he shall deliver the property to the plaintiff.

Action on redelivery bond will not preclude action against sheriff if bond not genuine—if sureties have not justified former suit, *Magnus v. Woolery* 14 W. 43.

§8427. **Qualification of Sureties.** §148.—148. The qualification of sureties and their justification shall be as prescribed in respect to bail upon an order of arrest.

Justification in arrest and bail, §7366.

§8428. **Sheriff May Break Buildings to Make Levy.** §149.—149. If the property or any part thereof be concealed in a building or enclosure, the sheriff shall publicly demand its delivery. If it be not delivered, he shall cause the building or enclosure to be broken open and take the property into his possession, and if necessary he may call to his aid the power of his county.

Breaking building for levy, justice's court, §9621.

§8429. **Sheriff Shall Deliver Property.** §150.—150. When the sheriff shall have taken the property as herein provided, he shall keep it in a secure place and deliver it to the party entitled thereto, upon receiving his lawful fees for taking, and his necessary expenses for keeping the same.

§8430. **Claim by Third Party—Indemnity to Sheriff by Plaintiff.** §151. 151. If the property taken be claimed by any other person than the defendant or his agent, and such person make affidavit of his title thereto, or his right to the possession thereof, stating the grounds of such title or right, and serve the same upon the sheriff before the delivery of the property to the plaintiff, the sheriff shall not be bound to keep the property or deliver it to the plaintiff, unless the plaintiff, on demand indemnify the sheriff against such claim by a bond, executed by two sufficient sureties, accompanied by their affidavits that they are each worth double the value of the property, as specified in the affidavit of plaintiff, over and above their debts and liabilities, exclusive of property exempt from execution, and freehold-ers or householders of the county; and no claim to such property by any other person than the defendant or his agent shall be valid against the sheriff, unless made as aforesaid; and notwithstanding such claim, when so made, he may retain the property a reasonable time to demand such indemnity.

Claim in execution, etc., §7843; in justice's court, §9623.

§8431. **Return by Sheriff.** §152. The sheriff shall file the affidavit, with the proceedings thereon, with the clerk of the court in which the action is pending within twenty days after taking the property mentioned therein.

## RULES OF THE SUPERIOR COURTS.

(The following general rules were adopted July 27, 1910, under Const., Art. 4, §24, and §8635.)

§8431a. **Pleadings, Copies, Etc.** Rule 1. (a) All pleadings shall be plainly written or printed and paged. Each cause of action, defense, reply or counter-claim shall be plainly and separately stated and consecutively numbered, and shall be divided into paragraphs according to the subject matter, and each paragraph shall be numbered consecutively. Copies of any pleading shall conform in paragraphing and numbering to the original. Copies of all motions, demurrers and pleadings, except complaints, must be served on the opposite party, or his attorney, unless such service is expressly waived in writing. At the trial of any issue of law or fact, or upon the hearing of any motion, the files shall be for the use of the court, except as to affidavits and exhibits.

(b) Pleadings in all cases must be filed on or before the time fixed by the notice of the adverse party for the hearing of any motion or demurrer addressed thereto. The party whose pleading is not filed within such time may be adjudged in default.

§8431b. **Amendments.** Rule 2. After issue of fact joined, no amendment to any pleading (unless during trial of a cause) will be allowed except upon written motion or applica-



tion therefor served, together with a copy of the proposed amended pleading, upon the adverse party. Upon the hearing of the application the court may, in its discretion, impose terms; but a party may at any time before the adverse party has answered or replied, and before the case is set for trial, amend his complaint, answer or reply once without leave and without costs by serving a copy of such amended pleading on the adverse party. No amendments shall be made to any pleading by erasing or adding words to the original on file, except by leave of court first had.

**§8431c. Time of Pleading. Rule 3.** (a) When a pleading is amended, the adverse party shall have three days in which to plead thereto, unless a different time is fixed by special rule or order.

(b) When a demurrer or motion has been determined, the party to whom the decision is adverse shall have three days in which to plead, unless a different time is fixed by special rule or order.

(c) Unless a different time is fixed by statute or special rule or order of court, a party against whom a pleading is filed must respond thereto within three days from the time the same is served upon him or service waived.

**Default. Rule 4.** A party may respond to any pleading at any time before a default is claimed. A default shall be deemed claimed whenever a motion therefor is filed, accompanied with the affidavit of the party or his attorney, claiming such default, that no appearance has been made in the action; but will not be granted against a party who has appeared in the action by attorney, until the motion has been served.

**§8431d. Divorce Actions. Rule 5.** No divorce cause shall be tried until after thirty days from the filing of the complaint and until after twenty days from the service upon the prosecuting attorney (in default cases) of the complaint, summons and motion for default and affidavit in support thereof. The court shall sign no decree in a divorce cause until the judgment fee has been paid by the successful party, and the clerk shall at once report such decree.

**§8431e. Motions. Rule 6.** (a) When a motion is supported by affidavits or other papers, it shall specify the papers to be used by the moving party and the grounds of the motion. Copies of affidavits and exhibits shall be served with the motion.

(b) A party moving to strike out any portion of a pleading shall, in the motion, specify the paragraphs or parts of paragraphs asked to be stricken out; and such motion must be served and filed within the time fixed by rule of court.

(c) The pendency of a demurrer or motion to strike out any part of a pleading, or to require a pleading to be made more definite and certain, shall enlarge the time to answer or reply until the decision upon such demurrer or motion.

(d) Not more than ten minutes shall be allowed counsel on each side for arguing a demurrer or motion unless further time be granted by special order of the court.

(e) All motions directed to any pleading must be made and presented to the court for hearing at one and the same time, the grounds therefor being separately stated, and

**§8431f. Assignment of Causes. Rule 8.** (a) When a cause is set and called for trial, it must be tried or dismissed, unless good cause is shown for a continuance. But the court may in a proper case, and upon terms, reset the same.

(b) In counties having but one judge, suits in chancery and actions at law to be tried by the court without the intervention of a jury will not be set down or called for trial shall be attached and properly indorsed under one cover; and no motion directed to the same pleading shall be thereafter heard or considered except by special permission of the court. A demurrer shall be deemed a waiver of all grounds for any motion directed to the same pleading.

**Notice. Rule 7.** The judges of the courts in the several counties may, respectively, at their option, by special rule, designate a day or days of each week during which the court is held in the county as "motion day."

while a jury is in attendance upon the court, except by mutual consent, and at a time when no jury case is ready for trial.

(c) In setting cases for trial, preference will be given to criminal over civil cases, and cases where the defendant or a witness is in confinement will have precedence over other cases.

(d) Except by consent or special order of the court, no civil action requiring a jury will be tried in any jury session unless the same be at issue on the first day of such session.

**§8431g. Examinations, Exceptions, etc. Rule 9.** When two or more attorneys are upon the same side trying a case, the attorney conducting the examination of a witness shall continue until the witness is excused from the stand; and all objections made or exceptions taken during the examination of such witness shall be made or announced by the attorney who is conducting the examination or cross-examination.

**§8431h. Stipulations. Rule 10.** No agreement or consent between parties or attorneys in respect to the proceedings in a case, the purport of which is disputed, will be regarded by the court (except upon a motion to disbar an attorney), unless same shall have been made and assented to in open court and entered in the minutes, or unless the evidence thereof shall be in writing and subscribed by the attorney denying the same.

**§8431i. Attorneys as Witnesses. Rule 11.** If an attorney shall offer himself as a wit-

ness on behalf of his client and give evidence on the merits, he shall not argue the case to the jury, unless by permission of the court.

§8431j. Proposed Instructions to Juries. Rule 12. (a) In every cause which is being tried to the court and a jury it shall be the duty of counsel for the respective parties, before or immediately after the first witness is sworn and before any evidence is introduced in the trial of the cause, to file with the clerk and hand to the judge presiding a clear and succinct statement of the issues to be tried as set forth in the pleadings in the cause.

(b) Before or immediately after the first witness is sworn for the side not having to sustain the burden of proof, and before any testimony of such witness is given, in every cause which is being tried to the court and a jury, it shall be the duty of counsel for the respective parties to file in triplicate with the clerk, one copy for the court, one for the clerk and one for opposing counsel, any and all proposed instructions to the jury covering the law as disclosed by the pleadings and as developed by the evidence offered and admitted by the court up to that time.

Counsel may thereafter, at any time before the court instructs the jury, file in triplicate with the clerk, one copy for the court, one for the clerk and one for opposing counsel, further and additional proposed instructions to the jury upon any or all questions of law which may be developed by any evidence admitted by the court after the first witness for the side not having the burden of proof has testified.

All proposed instructions must be typewritten; each proposed instruction must be written on a separate sheet of paper; all such proposed instructions shall be unnumbered.

Any proposed instruction which is handed to the court at a time later than is directed by this rule may be disregarded by the judge presiding. But in that event the judge shall write on the margin of the paper on which the said proposed instruction is printed the fact that he refuses to consider the same for the reason that the requirements of



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(e) All motions directed to any pleading must be made and presented to the court for hearing at one and the same time, the grounds therefor being separately stated, and shall be attached and properly indorsed under one cover; and no motion directed to the same pleading shall be thereafter heard or considered except by special permission of the court. A demurrer shall be deemed a waiver of all grounds for any motion directed to the same pleading.

**Notice. Rule 7.** The judges of the courts in the several counties may, respectively, at their option, by special rule, designate a day or days of each week during which the court is held in the county as "motion day."

**§8431f. Assignment of Causes. Rule 8** (a) When a cause is set and called for trial, it must be tried or dismissed, unless good cause is shown for a continuance. But the court may in a proper case, and upon terms, reset the same.

(b) In counties having but one judge, suits in chancery and actions at law to be tried by the court without the intervention of a jury will not be set down or called for trial while a jury is in attendance upon the court, except by mutual consent, and at a time when no jury case is ready for trial.

(c) In setting cases for trial, preference will be given to criminal over civil cases, and cases where the defendant or a witness is in confinement will have precedence over other cases.

(d) Except by consent or special order of the court, no civil action requiring a jury will be tried in any jury session unless the same be at issue on the first day of such session.

regarded by the court (except upon a motion to disbar an attorney), unless same shall have been made and assented to in open court and entered in the minutes, or unless the evidence thereof shall be in writing and subscribed by the attorney denying the same.

**§8431i. Attorneys as Witnesses. Rule 11.** If an attorney shall offer himself as a wit-

ness on behalf of his client and give evidence on the merits, he shall not argue the case to the jury, unless by permission of the court.

**§8431j. Proposed Instructions to Juries.** Rule 12. (a) In every cause which is being tried to the court and a jury it shall be the duty of counsel for the respective parties, before or immediately after the first witness is sworn and before any evidence is introduced in the trial of the cause, to file with the clerk and hand to the judge presiding a clear and succinct statement of the issues to be tried as set forth in the pleadings in the cause.

(b) Before or immediately after the first witness is sworn for the side not having to sustain the burden of proof, and before any testimony of such witness is given, in every cause which is being tried to the court and a jury, it shall be the duty of counsel for the respective parties to file in triplicate with the clerk, one copy for the court, one for the clerk and one for opposing counsel, any and all proposed instructions to the jury covering the law as disclosed by the pleadings and as developed by the evidence offered and admitted by the court up to that time.

Counsel may thereafter, at any time before the court instructs the jury, file in triplicate with the clerk, one copy for the court, one for the clerk and one for opposing counsel, further and additional proposed instructions to the jury upon any or all questions of law which may be developed by any evidence admitted by the court after the first witness for the side not having the burden of proof has testified.

All proposed instructions must be typewritten; each proposed instruction must be written on a separate sheet of paper; all such proposed instructions shall be unnumbered.

Any proposed instruction which is handed to the court at a time later than is directed by this rule may be disregarded by the judge presiding. But in that event the judge shall write on the margin of the paper on which the said proposed instruction is printed the fact that he refuses to consider the same for the reason that the requirements of this rule have not been complied with.

**§8431k. Signing of Findings of Fact and Conclusions of Law.** Rule 13. Unless an emergency is shown to exist, the court will not sign findings of fact and conclusions of law until the defeated party or parties shall have had three days notice of the time and place of the submission thereof, and shall have been served with copies of the proposed findings and conclusions.

**§8431m. New Trials.** Rule 14. The time within which a motion for a new trial shall be served and filed in a cause tried by the court without a jury shall not begin to run until the findings of fact and conclusions of law therein shall have been signed by the court.

**§8431n. Injunctions, Attachments and Receivers.** Rule 15. On application for injunction or motion to dissolve an injunction or discharge an attachment, or to appoint or discharge a receiver, the notice thereof shall designate the kind of evidence to be introduced on the hearing. This rule shall not be construed as pertaining to applications for restraining orders or for appointment of temporary receivers. If the application is to be heard on affidavit, copies thereof must be served by the moving upon the adverse party at least three days before the hearing.

Oral testimony shall not be taken on such hearing unless permission of the court is first obtained and notice of such permission served upon the adverse party at least three days before the hearing.

**§8431o. Receivers—Executors—Administrators.** Rule 16. Administrators, executors, receivers or other persons having charge, or settlement of any estate applying to the court for an order allowing a claim to be compromised and settled for less than its face value, the court will appoint a day not less than five days after such application for hearing same, unless for good cause shown less time should intervene, and will direct such notice as may be deemed proper.

All reports of receivers which involve an accounting shall be filed at least ten days before the hearing. On filing and presentation of such report the court will appoint a time for hearing the same, and will direct such notice to be given as will most likely advise all interested parties of such hearing.

**§8431p. Habeas Corpus.** Rule 17. In all habeas corpus proceedings a copy of the petition shall be served with the writ upon the person to whom the writ is directed, and if the writ be directed to the sheriff or other public officer it shall be the duty of such officer to immediately notify the prosecuting attorney of the time and place the writ is made returnable, and deliver to him a copy of the petition.

**§8431r. Return of Sale of Real Property.** Rule 18. In all cases, upon the return of a sale of real property by an executor, administrator or guardian, the court shall fix a day for a hearing thereof, of which notice of at least ten days shall be given by the clerk, by notices posted in three public places in the county or by publication in a newspaper, or both, as the court shall direct.



**§8431s. Counsel Fees.** Rule 19. When it becomes necessary for the court to allow attorneys' fees in connection with any probate matter or proceeding, the attorney for whom such allowance is asked must file in writing with the application therefor an itemized statement, verified on oath, showing the services for which such fees are asked. Said statement must be a showing of the total amount of the assets of the estate, the total amount of sales of real estate, the amount of each claim allowed upon which the advice of the attorney as to the merits of the particular claim has been given, and the amount of money of the estate collected by the attorney without suit, giving separately the amount of each claim collected, also any other item for which additional compensation is asked.

**Form of Entries.** Rule 20. Counsel obtaining an order, judgment or decree will furnish a form of the same when so requested by the court.

**Order.** Rule 21. (a) Attorneys desiring to address the court shall arise and be recognized. They shall not approach the bench for the purpose of having the court sign any order, without having first addressed the court and obtained permission.

(b) Attorneys must not indulge in a general conversation among themselves during a session of the court. Any violation of this rule will subject the attorney to a fine.

**§8431t. Duties of the Clerk—Depositions.** Rule 22. (a) Upon the receipt of a deposition in any case, the clerk shall forthwith indorse the date of the reception upon the wrapper thereof, and shall enter the same upon the appearance docket. Such deposition shall remain unopened until the court shall order the same to be published, which will be at the request of either party. When publication is ordered, the clerk shall indorse upon the same: "This deposition filed (giving the date on the wrapper) and published this — day of —, 19—." The wrapper shall be preserved by the clerk without unnecessary mutilation.

**Entry of Judgments—Costs—Retaxation.** (b) He shall not enter judgment or decree until it is signed by the judge, and the same shall then be entered for the sum found due or the relief awarded, with costs and disbursements, if any, to be taxed. If no cost bill is filed by the party to whom costs are awarded within ten days after the entry of the judgment or decree, the clerk shall proceed to tax the following costs and disbursements, namely: 1. The statutory attorney's fee. 2. The clerk's fees. 3. The sheriff's fees. 4. Other disbursements, the amount whereof plainly appears on the papers in the case—

And shall enter the sum thereof in the judgment entry and execution docket. If a cost bill is filed, he shall enter as the amount to be recovered the amount claimed in such cost bill, unless a motion to retax costs be filed within ten days.

**Bonds to Be Filed.** (c) Every bond taken or filed in any proceeding (except for costs) the clerk shall at once, as of the date of filing it, copy and enter at large upon the journal. The clerk shall indorse upon every affidavit or undertaking filed to procure a writ of attachment, the day, hour and minute of filing thereof.

**Transcripts on Appeal, Transmission.** (d) In cases appealed to the Supreme Court, he shall not forward the statement of facts therein to the clerk of the Supreme Court until the time for filing respondent's brief has elapsed, except by consent in writing of respondent's counsel.

**§8431u. Duties of the Sheriff.** Rule 23. Immediately upon the receipt of a writ of attachment, the sheriff shall indorse thereon, in ink, the day, hour and minute when the same first came into his hands.

**Summer Recess.** Rule 24. Between the first day of July and the first day of September shall be vacation, and no cases will be set for trial, or tried, except by order of the judge or by consent of all parties and the court.

**§8431v. Construction of Rules.** Rule 25. Wherever used in these rules, the word "court" shall be construed to mean the judge thereof, and the word "judge" shall be construed to mean the court, when necessary for the proper application of the rule. Wherever used in these rules, the word "party" shall be construed to mean his attorney in the cause, and the word "attorney" to mean his client in the cause, when necessary for the proper application of the rule. And whenever used in these rules, the word "pleadings" shall be construed to comprise any or all other papers in a cause to which the rule shall be properly applicable.

**Suspension of Rules.** Rule 26. Any of the foregoing rules may be suspended by written stipulation of parties, approved by the court.

**Special Rules.** Rule 27. A Superior Court may adopt any special rule or rules necessary for its county not inconsistent with these general rules.

## SUMMONS.

Commercial waterway condemnation §1379.  
 Defendant not served, served after judgment §8090.  
 Eminent domain by private corporations §7646; lienors §7648.  
 Foreign corporations, service of—after withdrawal from the state §4659.  
 Foreign judgment without personal service subject to defenses §7997.  
 Lienors in condemnation how summoned

§7648.  
 Registration of land titles §5743.  
 State, service on attorney general in actions against §6261.  
 Substituted party entitled to original notice §8277.  
 Surety company shall appoint agent §502.  
 Tax foreclosures §6992.  
 Telegraph, writs, etc., by §7794.  
 Water code §7217.

## MANNER OF COMMENCEMENT OF CIVIL ACTIONS.

Substitute—AN ACT to provide for the manner of commencing civil actions in the superior courts, and bringing the same to trial. Approved March 15, 1893. General Repeal. Laws '93 p 407.

§8432. Commencement of Actions by Summons. §1. Civil actions in the several superior courts of this state shall be commenced by the service of a summons, as hereinafter provided, or by filing a complaint with the county clerk as clerk, of the court: Provided, That unless service has been had on the defendant prior to the filing of the complaint, the plaintiff shall cause one or more of the defendants to be served personally, or commence service by publication within ninety days from the date of filing the complaint. L. '95 170.

Citation in probate procedure, §9825.

Publication within sixty days of his pendens filed, §8452.

Attachment, §7379; forcible entry and detainer, §7968.

There is but one subject expressed in the title of the following act, which provides for "commencing" and "bringing to trial" civil actions, McMaster v. Thresher Co. 10 W. 147.

This act, with the following act, does not modify the forcible entry and detainer act requiring answer to summons in eight days, State ex rel. Smith v. Parker 12 W. 686.

Voluntary appearance of a defendant after the following act took effect gives jurisdiction in an action commenced under the old law, Seattle v. O'Connell 16 W. 625.

Action dismissed for want of prosecution after five years, Congdon v. Aumiller 79 W. 616.

Complaint need not be in existence when summons served, Martin v. Ewing 92 W. 525.

Presumption from delay of want of diligence in prosecution overcome by showing excuse, Gibbens v. Nipp 80 W. 332.

Service in mechanics' lien foreclosure must be had within eight months—the life of the lien, City Sash & Door Co. v. Bunn 90 W. 669.

Action is pending when complaint served or filed and second action may be abated, Longmore v. Puget Sound Tr., L. & P. Co. 78 W. 468.

Complaint filed and default entered three years after complaint served—vacation of judgment refused, First National Bank v. Dudley 80 W. 376.

Second summons with amended complaint served is good as first service, Roznik v. Becker, 68 W. 63.

Action dismissed for want of prosecution

after six years, Rehmke v. Fogarty 57 W. 412.

Mechanics lien complaint must be filed—dismissal without reserving personal judgment, Service v. McMahon 42 W. 452.

In mortgage foreclosure summons by publication must be begun within ninety days, Fuhrman v. Power 43 W. 533.

Publication must be commenced—new action after 90 days, McPhee v. Nida 60 W. 619.

Action held abandoned and dismissed after three years, First Nat. Bank v. Hunt 40 W. 190.

Resident defendant served, publication against nonresident in four months good, Johnston v. Gerry 34 W. 524.

Former law in force for the purpose of attachment, Cosh-Murray Co. v. Tuttle 10 W. 449.

Issuance of summons not condition precedent to mandamus, Smith v. Ormsby 20 W. 396.

Applies to forcible entry and detainer, Security Savings & T. Co. v. Hackett 27 W. 247.

Return showing service of "complaint" does not show good service, Powell v. Nolan 27 W. 318.

Judgment against a co-defendant cannot be had without notice and the usual time to plead, *Id.*

Finding that defendant was regularly and duly served taken as true as to appellant who had not accepted, *Id.*

Complaint must be filed to "commence" action to stop statute of limitations, Cresswell v. Spokane County 30 W. 620.

Action properly dismissed after seven years, Langford v. Murphy 30 W. 499.

Action must be prosecuted with diligence or executor cannot be substituted for defendant in case of his death, Neff v. Neff 32 W. 82.

§8433. Requisites of Summons. §2. The summons must be subscribed by the plaintiff or his attorney, and directed to the defendant requiring him to answer the complaint, and serve a copy of his answer on the person whose name is subscribed to the summons, at a place within the state therein



specified, in which there is a postoffice, within twenty days after the service of the summons, exclusive of the day of service.

Summons by non-resident attorney entitled to practice in this State is valid— requisite and statutory form of summons, *Wagnitz v. Ritter* 31 W. 343. Act supersedes all former laws, and fixes time for answer at twenty days in all cases, *McMaster v. Thresher Co.* 10 W. 147; see, *Merritt v. Corey* 22 W. 444.

§8434. Contents of Summons. §3. The summons shall also contain:

(1) The title of the cause, specifying the name of the court in which the action is brought, the name of the county designated by the plaintiff as the place of trial, and the names of the parties to the action, plaintiff and defendant.

(2) A direction to the defendants, summoning them to appear within twenty days after service of the summons, exclusive of the day of service and defend the action.

(3) A notice that, in case of failure so to do, judgment will be rendered against them, according to the demand of the complaint. It shall be subscribed by the plaintiff, or his attorney, with the addition of his postoffice address, at which the papers in the action may be served on him by mail. There may, at the option of the plaintiff, be added at the foot, when the complaint is not served with the summons, and the only relief sought is the recovery of the money, whether upon tort or contract, a brief notice specifying the sum to be demanded by the complaint.

Section applies to insurance companies, *State ex National Surety Co. v. Court* 99 W. 573. This act is complete and supersedes all former laws and fixes the time for answer in all cases at twenty days. *McMaster v. Thresher Co.* 10 W. 147.

§8435. Form Prescribed. §4. Such summons shall be substantially in the following form:

..... Court ..... County.  
A B, Plaintiff,  
vs.  
C D, Defendant.

The State of Washington ..... to the said ....., defendant:  
You are hereby summoned to appear within twenty days after service of this summons; exclusive of the day of service, and defend the above entitled action in the court aforesaid; and in case of your failure so to do, judgment will be rendered against you, according to the demand of the complaint, which will be filed with the clerk of said court, or a copy of which is herewith served upon you.

E F, Plaintiff's Attorney.

P. O. Address, ..... County Wash.

Omitting "exclusive of day of service" not fatal, *Spokane Merchants Ass'n v. Acord* 99 W. 674. *Warner v. Miner* 41 W. 98. Substantial compliance good against general objection first raised on appeal, *Wagnitz v. Ritter* 31 W. 343.

Is printed name of attorney sufficient?

Complaint Must Be Filed or Served With Summons. §5. A copy of the complaint must be served upon the defendant with the summons, unless the complaint itself be filed in the office of the clerk of the superior court of the county in which the action is commenced within five days after service of such summons, in which case the service of the copy may be omitted; but the summons in such case must notify the defendant that the complaint will be filed with the clerk of said court; and if the defendant appear within ten days after the service of the summons, the plaintiff must serve a copy of the complaint on the defendant, or his attorney, within ten days after the notice of such appearance, and the defendant shall have at least ten days thereafter to answer the same; and no judgment shall be entered against him for want of an answer in such case till the expiration of the time.

Failure to serve complaint will not subject judgment to collateral attack, *Munch v. McLaren* 9 W. 676. and summons quashed alias summons served without complaint will give court jurisdiction, *Mounds v. Goranson* 29 W. 261.

After service of summons and complaint  
§8437. Who May Serve Summons. §6. In all cases, except when service is made by publication, as hereinafter provided, the summons shall be served by the sheriff of the county wherein the service is made, or by his deputy, or by any person over twenty-one years of age, who is competent to be a witness in the action, other than the plaintiff.

No costs for service by constable, *Park v. Newell* 87 W. 431. Affidavit of service must show person 21 at time of service, *French v. Ajax Oil*

etc. Co. 44 W. 305.

Private individual serving summons cannot waive or modify the same unless ex-

pressly authorized by the plaintiff, Washington Mill Co. v. Marks 27 W. 170.

**§8438. Manner of Service. §7.** The summons shall be served by delivering a copy thereof, as follows:

(1) If the action be against any county in this state, to the county auditor.

(2) If against any town or incorporated city in the state, to the mayor thereof.

(3) If against a school district to the clerk thereof.

(4) If against a railroad corporation, to any station, freight, ticket, or other agent thereof within this state.

(5) If against a corporation owning or operating sleeping cars, or hotel cars, to any person having charge of any of its cars or any agent found within the state.

(6) If against an insurance company, to any agent authorized by such company to solicit insurance within this state.

(7) If against a company or corporation doing any express business, to any agent authorized by said company or corporation to receive and deliver express matters and collect pay therefor within this state.

(8) If the suit be against a company or corporation, other than those designated in the preceding subdivisions of this section, to the president or other head of the company, or corporation; secretary, cashier, or managing agent thereof.

(9) If the suit be against a foreign corporation or non-resident joint stock company, or association, doing business within this state, to any agent, cashier or secretary thereof.

(10) If against a minor under the age of fourteen years, to such minor personally, and also to his father, mother, guardian, or if there be none within this state, then to any person having the care or control of such minor, or with whom he resides, or in whose service he is employed, if such there be.

(11) If against any person for whom a guardian has been appointed for any cause, then to such guardian.

(12) In all other cases, to the defendant personally, or by leaving a copy of the summons at the house of his usual abode with some person of suitable age and discretion then resident therein. Service made in the modes provided in this section shall be taken and held to be personal service.

**Venue of action against corporation §8543.**

**Notices and writs by telegraph, §§7794, 7789.**

**Voluntary appearance, §8451.**

**Corporations under Insurance Code, §2920; bonding companies, §502.**

**Replevin cases, §7376.**

Purchasing agents' name appeared in directories but purchases had to be approved, held summons could not be served on agent, Johanson v. Alaska Treadwell Gold Mine Co. 225 Fed. 270.

Service on non-resident while in this state held valid, Groundwater v. Town 93 W. 384.

Advertising "general agent" and issuing tickets and bills of lading is not agent for service of process, Royce v. Chicago & N. W. R. Co. 90 W. 378.

Name of corporation substituted in complaint after service, Freeborn v. Chewelah Copper, etc., Co. 89 W. 519.

Person not statutory agent may be served, Frieze v. Powell 79 W. 483.

Service on wife by delivery to husband at dwelling house, good, State ex rel. Pacific Loan, etc., Co. v. Superior Court 84 W. 392.

Foreign corporation temporarily engaging in business by the purchase of a bank-

rupt stock, its president temporarily in the state, may be served with process, Spokane Merchants' Ass'n v. Clere Clothing Co. 84 W. 616.

Return of service at the "usual abode" is disproved by uncontradicted affidavit of different "abode," service quashed, Wilbert v. Day, 83 W. 390.

Service good on any agent of foreign corporation, Barrett Mfg. Co. v. Kennedy, 73 W.

Corporation presumed to do business where sued—bond executed in county basis of action, Hayworth v. McDonald, 67 W. 496.

Service on vice-president and trustee may be sufficient, Silvain v. Benson, 68 W. 286.

Service on third person at place defendant's daughter lived the defendant being a non-resident is invalid, Waterman v. Bash 46 W. 212.

Home maintained though defendant out of state part of time, service may be made and statute limitation not tolled, Crowder v. Morphy 61 W. 626.

Foreign corporation shipping car lots of household goods into this state distributing them by agent is doing business, Lee v. Fidelity etc. Co. 51 W. 208.

General agent advertised as such is not



an agent if reports made to and salary paid by other companies—routing agent—“doing business,” *Arrow Lum. Co. v. Union Pac. R. Co.* 53 W. 629.

Service may be had on foreign corporation having principal office in this State for tort in another State, *Smith v. Empire State etc. Co.* 127 Fed. 462.

Service on agent of foreign corporation only when cause of action arose in this State, *Olson v. Buffalo Hump Mining Co.* 130 Fed. 1017.

Service on fraternal insurance company by service of Insurance Commissioner, *Bennett v. Maccabees* 40 W. 431.

Service on trustee of defunct corporation is bad, *Stanton v. Gilpin* 38 W. 191.

Railroad only advertising and maintaining soliciting agent in this State cannot be held by service on agent, *Rich v. C. B. & Q. Ry.* 34 W. 14.

Service of foreign copartnership cannot be made on agent in this State, *Coughlin v. Pinkerton* 41 W. 500.

Motion to quash after general appearance is bad, *Mulholland v. Washington Match Co.* 35 W. 315.

Service of a domestic corporation by service on an agent in charge of a branch store is insufficient, *Osborne v. Columbia Etc. Corporation* 9 W. 666.

Service on the purser of a steamboat regularly landing and discharging freight is good service on a foreign corporation,

*Sievers v. Dalles Etc. Co.* 24 W. 302.

When validity of service on domestic corporation depends on disputed facts as to place of office or whether officer was at proper place, finding of trial court will not be disturbed, *Zindorf v. Western American Co.* 26 W. 695.

Notice of action will not dispense with service, *Osborne v. Columbia County Farmers Alliance Corp.* 9 W. 666.

Service on officer of foreign corporation temporarily in State does not give jurisdiction, *Carstens v. Leidigh Etc. Lumber Co.* 18 W. 450.

Judgment without personal service or jurisdiction of property is void—special appearance, *Paxton v. Daniel* 1 W. 19; appearance, *Sayward v. Carlson* 1 W. 29.

Method of service on minor exclusive, *Hatch v. Ferguson* 57 Fed Rep. 966, affirmed (C. C. A.) 68 id. 43.

Usual abode of married man is where his wife and family reside—presumption of continuance—proof of change, *Northwestern & P. H. Bank v. Ridpath* 29 W. 687.

After general appearance party in court for all purposes, *French v. Ajax O. & D. Co.* 44 W. 308.

Summons not specifying christian name held good, *Gravelle v. Canadian etc. Mtg. & T. Co.* 42 W. 457.

Service on father, leaving copies for minor children good, *Morrison v. Morrison* 25 W. 467.

**Supplementary—AN ACT providing for the service of summons and complaint upon corporations which have been doing business in this state when such corporations are in the hands of a receiver, and there are no officers in this state upon whom summons and complaint can be served. Approved March 16, 1897. Laws '97 p 284.**

**§8439. Service of Summons on Receiver.** §1. That whenever any domestic or foreign corporation which has been doing business in this state, has been placed in the hands of a receiver and the receiver is in possession of any of the property or assets of such corporation, service of all process upon such corporation may be made upon the receiver thereof.

Service at place of business insufficient, *Hoffman v. Spokane Jobbers Ass'n* 54 W. 179.

**§8440. Service on Defunct Domestic Corporation.** §8. Whenever any corporation, created by the laws of this state, or late Territory of Washington, does not have an officer in this state upon whom legal service of process can be made, an action or proceeding against such corporation may be commenced in any county where the cause of action may arise, or said corporation may have property; and service may be made upon such corporation by depositing a copy of the summons, writ, or other process, in the office of the secretary of state, which shall be taken, deemed and treated as personal service on such corporation: Provided, A copy of said summons, writ, or other process shall be deposited in the post-office, postage paid, directed to the secretary, or other proper officer of such corporation, at the place where the main business of such corporation is transacted, when such place of business is known to the plaintiff, and be published at least once a week for six weeks in some newspaper printed and published at the seat of government of this state, before such service shall be deemed perfect.

Service good for tax foreclosure, *Dabney v. Stearns* 73 W. 583.

Service on officer of foreign corporation that has never done business in state insuf-

ficient, *Carstens v. Leidigh* 18 W. 450.

Service on soliciting agent of foreign railway insufficient, *Rich v. Chicago etc. Ry.* 34 W. 14.

**§8441. Publication of Summons.** §9. When the defendant cannot be found within the state, (of which the return of the sheriff of the county in which the action is brought, that the defendant cannot be found in the

county, is prima facie evidence), and upon the filing of an affidavit of the plaintiff, his agent or attorney, with the clerk of the court, stating that he believes that the defendant is not a resident of the state, or cannot be found therein, and that he has deposited a copy of the summons (substantially in the form prescribed in section 233 of said codes and statutes) and complaint in the post-office, directed to the defendant at his place of residence, unless it is stated in the affidavit that such residence is not known to the affiant, and stating the existence of one of the cases hereinafter specified, the service may be made by publication of the summons, by the plaintiff or his attorney in either of the following cases:

1. When the defendant is a foreign corporation, and has property within the state;

2. When the defendant, being a resident of this state, has departed therefrom with intent to defraud his creditors, or to avoid the service of a summons, or keeps himself concealed therein with like intent;

3. When the defendant is not a resident of the state, but has property therein and the court has jurisdiction of the subject of the action,

4. When the action is for divorce in the cases prescribed by law;

5. When the subject of the action is real or personal property in this state, and the defendant has or claims a lien or interest, actual or contingent, therein, or the relief demanded consists wholly, or partly, in excluding the defendant from any interest or lien therein;

6. When the action is to foreclose, satisfy, or redeem from a mortgage, or to enforce a lien of any kind on real estate in the county where the action is brought, or satisfy or redeem from the same;

7. When the action is against any corporation, whether private or municipal, organized under the laws of the state and the proper officers on whom to make service do not exist or cannot be found. L. '15 146; R.&B. §228.

Nonresident wife in action for maintenance may publish summons to nonresident husband with personal service on holders of his property, *Kelley v. Bausman* 98 W. 686.

Publication in eminent domain, §7648; notice to take deposition, §7736.

Judgment by default, §8109.

Return must show defendant cannot be found in the county to base publication of notice foreclosure of chattel mortgage, *White v. Powers* 89 W. 502.

Publication of service to vacate divorce decree not authorized, *Pullman v. Pullman* 92 W. 120.

Affidavit stating residence of defendant not known sufficient—diligence held sufficient, *Musselman v. Knottingham* 77 W. 435.

Service by publication in probate proceedings sustained, *Krohn v. Hirsch* 81 W. 222.

Statutes providing for service by publication must be strictly complied with, *Lutkens v. Young*, 63 W. 452.

Mailing of esummons to foreign corporation is not service on co-partnership with same name, *Yarbrough v. Pugh*, 63 W. 140.

Affidavit must contain all jurisdictional facts, *Felsing v. Quinn*, 62 W. 183.

Divorce includes annulment of marriage, *Piper v. Piper* 46 W. 671.

Publication and garnishment gives jurisdiction, *Nixon v. Hendy Mach. Wks.* 51 W. 419.

Service by publication and garnishment is good, *Halford v. Trewella* 36 W. 654.

Failure to mail where address known is fraud and vitiates summons, *Noble v. Aune* 50 W. 73.

Mailing to wrong address when correct address known is insufficient—evidence in setting aside, *Johnstone v. Peyton* 59 W. 436.

Filing affidavit after publication is mere irregularity and decree cannot be collaterally attacked, *Tilton v. O'Shea* 31 W. 513.

Failure to file affidavit for three days held not fatal, *Whitney v. Knowlton* 33 W. 319.

Diligence required to find address of non-resident, *Warner v. Miner* 41 W. 98.

Sale under ordinance of impounded cattle is a proceeding in rem, and service by publication is good, *Wilson v. Beyers* 5 W. 303.

Attorney who has not signed complaint may make affidavit, *Swanson v. Holye* 32 W. 169.

Affidavit for service by publication is good although it states conclusions, *Goore v. Goore* 24 W. 139; *Mosley v. Donnell* 42 W. 518.

Publication begun before affidavit filed will not defeat service, *Tilton v. O'Shea* 31 W. 513.

Construction of former statute, *Garrison v. Cheeney* 1 W. T. 489.

Cited 88 W. 612.

**§8441a. Saving Clause.** §2. No action or proceeding commenced or right existing when this act shall take effect, shall be affected or impaired thereby, but such action or proceeding shall be prosecuted and continued and such right remain as if this act has [had] not been passed.

Eminent domain, publication in §7648.



**AN ACT** authorizing the making, of unknown heirs of deceased persons, and unknown persons, parties defendant in actions pertaining to real estate, and providing for service on such unknown defendant. Approved March 16, 1903. Laws '03 p 277.

**§8442. Unknown Heirs, etc.** §1. That when the heirs of any deceased person are proper parties defendant to any action relating to real property in this State, and when the names and residences of such heirs are unknown, such heirs may be proceeded against under the name and title of "The unknown heirs" of the deceased.

Service held sufficient, *Phillips v. Thompson* 73 W. 78.

**§8443. Order of Service.** §2. Upon presenting an affidavit to the court or judge, showing to his satisfaction that the heirs of such deceased person are proper parties to the action, and that their names and residences cannot with use of reasonable diligence be ascertained, such court or judge may grant an order that service of the summons in such action be made on such "Unknown heirs" by publication thereof in the same manner as in actions against non-resident defendants.

**§8444. Title of Cause—Service.** §3. That, in any action brought to determine any adverse claim, estate, lien, or interest in real property, or to quiet title to real property, the plaintiff may include as a defendant in such action, and insert in the title thereof, in addition to the names of such persons or parties as appear of record to have, and other persons or parties who are known to have, some title, claim, estate, lien, or interest in the lands in controversy, the following viz.: "Also all other persons or parties unknown claiming any right, title, estate, lien, or interest in the real estate described in the complaint herein." And service of summons may be had upon all such unknown persons or parties defendant by publication as provided by law in case of non-resident defendants.

**§8445. Rights of Unknown Heirs.** §4. All such unknown heirs of deceased persons, and all such unknown persons or parties, so served by publication as in the preceding section of this act provided, shall have the same rights as are provided by law in case of all other defendants upon whom service is made by publication, and the action shall proceed against such unknown heirs, or unknown persons or parties, in the same manner as against defendants who are named, upon whom service is made by publication, and with like effect; and any such unknown heirs or unknown persons or parties who have or claim any right, estate, lien, or interest in the said real property in controversy, at the time of the commencement of the action, duly served as aforesaid, shall be bound and concluded by the judgment in such action, if the same is in favor of the plaintiff therein as effectually as if the action was brought against such defendant by his or her name and constructive service of summons obtained: Provided, however, That such judgment shall not bind such unknown heirs, or unknown persons or parties, defendant, unless the plaintiff shall file a notice of lis pendens in the office of the auditor of each county in which said real estate is located, in the manner provided by law, before commencing the publication of said summons.

**§8446. Time and Manner of Service By Publication—Form.** §5. The publication shall be made in a newspaper printed and published in the county where the action is brought (and if there be no newspaper in the county, then in a newspaper printed and published in an adjoining county, and if there is no such newspaper in an adjoining county, then in a newspaper printed and published at the capital of the state) once a week for six consecutive weeks. Provided, That publication of summons shall not be had until after the filing of the complaint; and the service of the summons shall be deemed complete at the expiration of the time prescribed for publication as aforesaid. The summons must be subscribed by the plaintiff or his attorney or attorneys. The summons shall contain the date of the first publication, and shall require the defendant or defendants upon whom service by publication is desired, to appear and answer the complaint within sixty days from the date of the first publication of such summons; and said summons for publication shall also contain a brief

statement of the object of the action. Said summons for publication shall be substantially as follows:

In the superior court of the State of Washington for the county of .....  
 ..... Plaintiff,

vs.

No. ....

..... Defendant.

The State of Washington to the said (naming the defendant or defendants to be served by publication):

You are hereby summoned to appear within sixty days after the date of the first publication of this summons, to wit, within sixty days after the ..... day of ....., 1....., and defend the above entitled action in the above entitled court, and answer the complaint of the plaintiff..., and serve a copy of your answer upon the undersigned attorneys for plaintiff..., at his (or their) office below stated; and in case of your failure so to do, judgment will be rendered against you according to the demand of the complaint, which has been filed with the clerk of said court. (Insert here a brief statement of the object of the action.)

.....  
 Plaintiff's Attorney

P. O. Address: ..... County ..... Washington.

L. '95 170.

Manner of publication, §8462; what papers, §8463.

Tax foreclosures, §6992, and notes.

Does not apply to tax foreclosure, *Noland v. Arnold* 77 W. 363.

Omission of reference to first publication not fatal, *Old Republic Min. Co. v. Ferry County*, 69 W. 600.

Non-resident defendant in default must make showing for defense before judgment, *Strunz v. Hood* 44 W. 99.

Publication giving time is "substantially" in form, *Stubbs v. Continental Timber Co.* 49 W. 431.

Publication requiring defendant to appear within sixty days after service insufficient, *Northington v. La Violette* 60 W. 525.

Alternative summons "sixty days after service" or "sixty days after first publication" held good, *Security Sav. Soc. v. Collins* 56 W. 455.

Attachment with personal service outside State is good, *Hunter v. Wenatchee Land Co.*, 36 W. 541.

If paper published in county service is good regardless of place paper is printed—requisites of newspaper, *Warner v. Miner*

41 W. 98.

"Newspaper" defined with reference to Seattle charter, *Puget Sound Pub. Co. v. Times Ptg. Co.* 33 W. 551.

Six consecutive publications are sufficient, *State ex rel. Boyd v. Superior Court* 6 W. 352.

Notice that property rights will be adjudicated includes separate property in divorce, *Goore v. Goore* 24 W. 139.

Publication under former law held sufficient, *Montgomery v. Manning* 1 W. T. 434.

Judgment before service complete is void, *id.*

Under act '75 twenty days allowed for answer—not necessary to publish complaint, *Jones v. Everett Land Co. (C. C. A.)* 61 Fed. Rep. 529.

In tax foreclosure under Laws '97 p. 182 § 96. defendant had sixty days after last publication to answer—change in law does not affect summons issued—appearance of defendant, *Woodhan v. Anderson* 32 W. 500.

Summons to answer within sixty days after "service" held insufficient in tax foreclosure, *Thompson v. Robbins* 32 W. 149.

#### §8447. Personal Service Outside of the State Equivalent to Publication.

§11. Personal service on the defendant out of the state shall be equivalent to service by publication, and the summons upon the defendant out of the state shall contain the same as personal summons within the state, except it shall require the defendant to appear and answer within sixty days after such personal service out of this state.

Does not require showing of nonresidence, *Roznik v. Becker*, 68 W. 63.

Personal service outside state must be done strictly as statute provides, court cannot order service, *State ex rel. Hopman v. Superior Court* 88 W. 612.

Service is good in street condemnation, *State ex rel. Thomas v. Superior Court* 42 W. 521.

Service of summons outside State of

summons providing for service either in or outside of State is good, *Lawyer Land Co. v. Steel* 41 W. 411.

Affidavit of facts authorizing service by publication not necessary in case of personal service outside of the State—service gives court jurisdiction of all property within the State, *Jennings v. Rocky Bar Gold Mining Co.* 29 W. 726.

§8448. Judgment on Service By Publication May Be Vacated. §12. If the summons is not served personally on the defendant, in the cases provided in the last two sections, he or his representatives, on application and sufficient cause shown, at any time before judgment, shall be allowed to defend the action; and, except in an action for divorce, the defendant or his



representative may in like manner be allowed to defend after judgment, and within one year after the rendition of such judgment, on such terms as may be just; and if the defense is successful, and the judgment, or any part thereof, has been collected or otherwise enforced, such restitution may thereupon be compelled as the court directs.

Judgment corrected only in the several methods provided by law, *McCaffrey v. Snapp* 95 W. 202.

Realty judgment opened within two years, §7532.

Applies in action to forfeit realty contract and quiet title, *Smith v. Stiles*, 68 W. 345.

Insufficient showing made to open tax judgment, *Warner v. Miner* 41 W. 98.

Defendants had actual notice and default was not vacated, *Jordan v. Hutchinson* 39 W. 373.

Showing necessary in tax lien foreclosure to open default, *Whitney v. Knowlton* 33 W. 319.

Motion is the proper procedure to vacate judgment, *Sturgiss v. Dart* 23 W. 244.

When a party has failed to prosecute an appeal from an order denying a motion to vacate a judgment the judgment becomes res adjudicata, *McCord v. McCord* 24 W. 529.

Judgment cannot be collaterally attacked where recitals of proper service are made, *Peyton v. Peyton* 28 W. 278.

Order opening default is not appealable, *Thompson v. Robbins* 32 W. 149.

Court cannot vacate divorce decree under other statutes, *Metler v. Metler* 32 W. 494.

**§8449. Procedure if Not All of Several Defendants Are Served.** §13. When the action is against two or more defendants, and the summons is served on one or more, but not on all of them, the plaintiff may proceed as follows:

(1) If the action is against the defendants jointly indebted upon a contract, he may proceed against the defendants served, unless the court otherwise directs; and if he recovers judgment it may be entered against all the defendants thus jointly indebted, so far only as it may be enforced against the joint property of all, and the separate property of the defendants served.

(2) If the action is against defendants severally liable, he may proceed against the defendants served, in the same manner as if they were the only defendants.

(3) Though all the defendants may have been served with the summons, judgment may be taken against any of them severally, when the plaintiff would be entitled to judgment against such defendants if the action had been against them alone.

Actions on several liability, §8273.

Contribution on execution joint liability §7902.

Confession of judgment on joint liability §8104.

Judgment when several defendants, §8080.

Person jointly liable not summoned. §8090; joint property reached in supplementary proceedings, §7947.

Cited 89 W. 547.

All defendants jointly liable must be included in judgment to allow summons to those not served after judgment, *Nolan v.*

*McNamee* 82 W. 585.

Judgment against joint debtor valid where other joint debtor is a non-resident and no joint property shown, *Brownfield v. Holland*, 63 W. 86.

Defendants first served not entitled to delay to make up issues with others, *National Bank of Com. v. Galland* 14 W. 502.

Tort may be waived in conversion of logs by one of several partners and action brought on implied contract that joint property of partnership may be held, *Livingstone v. Lovgren* 27 W. 102.

**§8449a. Return and Proof of Service.** §14. Proof of service shall be as follows:

(1) If served by the sheriff or his deputy, the return of such sheriff or his deputy indorsed upon or attached to the summons.

(2) If by any other person, his affidavit thereof indorsed upon or attached to the summons; or

(3) In case of publication, the affidavit of the printer, publisher, foreman, principal clerk, or business manager of the newspaper, showing the same, together with a printed copy of the summons as published, or

(4) The written admission of the defendant;

(5) In case of personal service out of the state, the affidavit of the person making the service, sworn to before a notary public, with a seal attached, or a clerk of a court of record. In case of service otherwise than by publication, the return, admission, or affidavit must state the time, place, and manner of service.

W. 356.

Proof by "cashier" not good—recital in deed does not cure, *Rockwood v. Turner* 89

W. 356. Affidavit and printed copy sufficient filing, *Security Sav. Soc. v. Collins* 56 W.

455.

Proof of service amended in condemnation proceedings, *Spokane Interurban R. Co. v. Connelly* 48 W. 515.

Return showing service of "complaint" is not good, *Powell v. Nolan* 27 W. 330.

Return must be filed, *id.* 347.

Party accepting service cannot object because non-judicial day, *McClellan v. Gaston* 18 W. 472.

Sheriff's return conclusive only as to facts peculiarly within his knowledge, it may be contested as to residence of party served, *Krutz v. Isaacs* 25 W. 566.

Recitals in return of sheriff not in his personal knowledge are not conclusive, *Mitchell, Lewis & S. Co. v. O'Neil* 16 W. 108.

Judgment and sale on false return set aside, *Johnson v. Gregory & Co.* 4 W. 109.

When service is accepted proof must be

**§8450. Court Has Jurisdiction When—Voluntary Appearance. §15.** From the time of the commencement of the action by service of summons, or by the filing of a complaint or as otherwise provided, the court is deemed to have acquired jurisdiction and to have control of all subsequent proceedings. A voluntary appearance of a defendant is equivalent to a personal service of the summons upon him. L. '95 170.

Action pending when complaint served or filed, second action may be abated, *Longmore v. Puget Sound Tr., L. & P. Co.* 78 W. 468.

After appearance party entitled to notice §8481.

Counter bond in attachment is appearance, §7403.

Divorce decrees may be set aside for

**§8451. Appearance—General and Special. §16.** A defendant appears in an action when he answers, demurs, makes any application for an order therein, or gives the plaintiff written notice of his appearance; after appearance a defendant is entitled to notice of all subsequent proceedings; but when a defendant has not appeared, service of notice or papers in the ordinary proceedings in an action, need not be made upon him. Every such appearance made in an action shall be deemed a general appearance, unless the defendant in making the same states that the same is a special appearance.

Answer to citation in probate is appearance, *In re Myhren's Estate* 95 W. 101.

Claims of special appearance cannot be maintained if there is general appearance, *Matson v. Kennecott Mines Co.* 101 W. 12.

Defendant may resist plaintiff without formal answer, §8460.

Partner held to have appeared generally by answer of copartnership though he had appeared and quashed service against himself, *National Union Fire Ins. Co. v. Dickinson* 92 W. 230.

Special appearance not waived by general appearance in supreme court, *International Development Co. v. Sanger* 75 W. 546.

Answer held general appearance, *Springfield Shingle Co. v. Edgecomb Mill Co.* 52 W. 620.

Special to object to process cured by subsequent general appearance, *French v. Ajax Oil etc. Co.* 44 W. 305.

Special becomes general by seeking dismissal on merits, *Bain v. Thoms* 44 W. 382.

General appearance waives service of process, *Calhoun v. Nelson* 47 W. 617.

Service of interrogatories is appearance, *State ex rel. Trickel v. Superior Court* 52

made of signature if defendant does not appear, *Downs v. Board of Directors* 4 W. 309.

Sheriff's return stated on information defendant resided in New York City, return on alias summons served by private individual showed that defendant was served in this State which was held good—conclusions regarding service rather than the facts are effectual if not objected to, *Northwestern & P. H. Bank v. Ridpath* 29 W. 687.

Sheriff may be compelled to correct defect but not to alter return regular on its face—remedy is action for damages, *Washington Co. v. Kinnear* 1 W. T. 99.

Return of service on county commissioners, *State Sav. Bank v. Davis* 22 W. 406.

Sheriff's return on foreign corporation must describe agent as such, *Cunningham v. Spokane Hyd. Co.* 18 W. 524.

fraud, *Chaney v. Chaney* 56 W. 145.

Voluntary appearance in accordance with the above section gives jurisdiction in an action instituted under former law, *Seattle v. O'Connell* 16 W. 625.

Acceptance of service of original process by an attorney without special authority is invalid, *Ashcroft v. Powers* 22 W. 440.

W. 13.

Vacating judgment entered without notice discretionary—judgment vacated and action dismissed, dismissal was error, *Malloy v. Union Transfer Co.* 60 W. 331.

Stipulation allowing amended complaint is general appearance, *Robertson Mfg. Co. v. Thomas* 60 W. 514.

General appearance waives defects in summons, *Bellingham v. Linck* 53 W. 208.

General appearance in Supreme Court is for new trial below and waives special appearance, *Columbia & Puget Sound R. Co. v. Moss* 53 W. 512.

Motion to quash service held a general appearance by demurrer, *Mahr v. Union Pac. R. Co.* 140 Fed. 921.

Motion made to dismiss action because no summons, after special appearance and motion to quash summons, is general appearance, *Teater v. King* 35 W. 138.

Special appearance waived in lower court is waived on appeal, *Hodges v. Price* 38 W. 1.

General appearance after special waives special, *Gaffner v. Johnson* 39 W. 437.

Answer after special appearance held general appearance, *Morris v. Healy Lumber Co.* 33 W. 451.



Special appearance must be saved at every step—service cured by general appearance, *Larsen v. Allen Line Steamship Co.* 37 W. 555.

Stipulation for change of venue is an appearance, *Jones v. Wolverton* 15 W. 590.

General appearance without a saving of special appearance waives the latter, *Walters v. Field* 29 W. 558.

Filing of pleading with clerk is an appearance, *Walla Walla Etc. Co. v. Budd* 2 W. T. 336.

Defect of partnership summons waived by appearance and answer, *Baxter v. Sco-*

land 2 W. T. 86.

Appearance by demurrer covers defects in process, *Williams v. Miller* 1 W. T. 88.

Jurisdiction of person cannot be questioned after appearance, *Meigs v. Keach* 1 W. T. 306.

A special appearance to move against service by publication does not become a general appearance because one of the grounds of the motion is that the case is one in which publication cannot be had, *Deming Investment Co. v. Ely* 21 W. 102.

Cited 83 W. 430.

#### §8452. Lis Pendens May Be Filed—Diligence of Party Filing Required.

§17. In an action affecting the title to real property the plaintiff, at the time of filing the complaint, or at any time afterwards, or whenever a writ of attachment of property shall be issued, or at any time afterwards, the plaintiff or a defendant, when he sets up an affirmative cause of action in his answer, and demands substantive relief at the time of filing his answer, or at any time afterwards, if the same be intended to affect real property, may file with the auditor of each county in which the property is situated, a notice of the pendency of the action, containing the names of the parties, the object of the action, and a description of the real property in that county affected thereby. From the time of the filing only shall the pendency of the action be constructive notice to a purchaser or encumbrancer of the property affected thereby, and every person whose conveyance or encumbrance is subsequently executed or subsequently recorded shall be deemed a subsequent purchaser or encumbrancer, and shall be bound by all proceedings taken after the filing of such notice, to the same extent as if he were a party to the action. For the purpose of this section an action shall be deemed to be pending from the time of filing such notice: Provided, however, That such notice shall be of no avail unless it shall be followed by the first publication of the summons, or by the personal service thereof on a defendant within sixty days after such filing. And the court in which the said action was commenced may, in its discretion, at any time after the action shall be settled, discontinued or abated, on application of any person aggrieved and on good cause shown and on such notice as shall be directed or approved by the court, order the notice authorized in this section to be canceled of record, in whole or in part by the county auditor of any county in whose office the same may have been filed or recorded, and such cancellation, shall be made by an indorsement to that effect on the margin of the record.

Conclusiveness of judgment §7532.

Receivership in supplementary proceedings holds realty and personalty, §7958.

In actions against unknown heirs, §8445.

Action under red light law operates as lis pendens, *State v. Terry* 99 W. 1.

Lis pendens prior to innocent purchaser subsequently recording deed, *Ellis v. McCoy* 99 W. 457.

Lis pendens by wife in divorce suit does not give her priority over prior creditors in separate property, *Gust v. Gust* 78 W. 414.

Lis Pendens is notice of rights, does not preclude rights, *Merrick v. Pattison* 85 W. 240.

Attachment indexed, no necessity for lis pendens, *Dill v. Bush* 86 W. 525.

Purchasers from parties to the action only are bound by lis pendens, *Burwell v. Smith*, 63 W. 1.

Lis Pendens notice must be filed at or after the time of commencement of the action, *Burwell v. Smith*, 63 W. 1.

Does not affect prior party wall lien, lienor not made a party, *Biggs v. Hoffman* 60 W. 495.

Lis pendens in condemnation proceedings authorized, *Portland & Seattle R. Co. v. Ladd* 47 W. 88.

Foreclosure street assessment cuts off rights under execution sale, *Wright v. Jessup* 44 W. 618.

Attachment indexed in name of husband is not notice to bona fide purchaser of community property in name of wife, *Anders v. Bonska* 61 W. 393.

Lis pendens is notice until action concluded—not necessary to record certificate of sale, *Hyde v. Heaton* 43 W. 433.

After judgment lis pendens not necessary, *London & S. F. Bank v. Dexter Horton & Co.* 126 Fed. 593.

Lis pendens is notice and binds junior unrecorded grantee though he was not made a party, *Payson v. Jacobs* 38 W. 203.

Stranger to action may sue to remove

cloud, King v. Branscheid 32 W. 634.

Under former law pendente lite purchaser, though innocent, took with equities, May v. Sutherland 41 W. 609.

Deed filed but not recorded nor indexed prior to lis pendens, Sawyer v. Vermont Loan & Tr. Co. 41 W. 524.

Lis Pendens is notice only to parties taking from parties to the action and not to strangers to the record, Johnson v. Irwin 16 W. 653.

Lis pendens having been filed in an action injunction will not lie against the defendant in possession under claim of title, Spokane v. Amsterdamsch Trustees Kantoor 18 W. 81.

Lis pendens notice may be signed by an attorney—does not bind prior unrecorded

deed; Eldridge v. Stenger 19 W. 697.

Lis pendens may be filed only when an action is pending and a filing by defendant after an action has been determined against him should be cancelled by the court on motion, Washington Etc. Imp. Co. v. Kinnear 24 W. 405.

City failing to file lis pendens in street assessment foreclosure bona fide purchaser not liable for costs after purchase, Dow v. Ballard 28 W. 87.

Actual notice must be shown in the absence of lis pendens—knowledge of attorney cannot be charged as actual notice, Pacific Mfg. Co. v. Brown 8 W. 347.

Lis pendens becomes effective from the day of its filing, Bigelow v. Brewer 29 W. 670.

**§8453. Notice, Requisites and Service. §18.** Notices shall be in writing; and notices and other papers may be served on the party or attorney in the manner prescribed in the next three sections, where not otherwise provided by statute.

Requisites of notice—proof service §7432.

Notices shall be in writing, §7432; amendment of, §8459.

Simple written admission of service of a notice of appeal is sufficient, Sackman v. Thomas 24 W. 660.

**§8454. Notices, Manner of Service. §19.** The services may be personal, or by delivery to the party, or attorney, on whom service is required to be made, or it may be as follows:

1. If upon an attorney, it may be made during his absence from his office, by leaving the papers with his clerk therein, or with a person having charge thereof; or, when there is no person in the office, by leaving it between the hours of six in the morning and nine in the evening, in a conspicuous place in the office; or, if it is not open to admit of such service, then by leaving it at the attorney's residence, with some person of suitable age and discretion.

2. If upon a party, it may be made by leaving the papers at his residence between the hours of six in the morning and nine in the evening, with some person of suitable age and discretion.

Service of notices generally, §7432.

Dropping through transom sufficient, Spencer v. Arlington 54 W. 259.

Service of proposed statement of facts

on appeal on a clerk is insufficient when the attorney is present, Times Ptg. Co. v. Seattle 25 W. 149.

**§8455. Notice, Service By Mail. §20.** Service by mail may be made, when the person making the service, and the person on whom it is to be made, reside in different places, between which there is a regular communication by mail.

Service by telegraph, §§7789, 7794; by mail, §8481.

Mailing in time to reach destination sufficient, Nor. Pac. R. Co. v. Smith, 68 W. 269.

Service of notice of settlement of statement of facts by mail is insufficient where

both parties reside in the same place, Bowen v. Cain 7. W. 469.

Service of notice of appeal by mail is sufficient if the parties reside in different places, De Roberts v. Stiles 24 W. 611.

**§8456. Notice, Manner of Service By Mail. §21.** In case of service by mail, the papers shall be deposited in the postoffice, addressed to the person on whom it is served, at his place of residence, and the postage paid; and in such case, the time of service shall be double that required in case of personal service.

Service of a statement of facts by mail is completed when the copy is deposited in the post office, State ex rel, Palmer Mountain Co. v. Court, 63 W. 442.

Service by mail does not apply to forcible entry and detainer, Smith v. Seattle

Camp W. O. W. 57 W. 556.

Notice of increase in valuation of real property given by Board of Equalization should be double the time of personal service, Lewis v. Bishop 19 W. 312; Everett Water Co. v. Fleming 26 W. 364.

**§8457. Service on Non-Resident. §22.** Where a plaintiff or defendant, who has appeared resides out of the state and has no attorney in the action, the service may be made by mail if his residence is known, if not known, on the clerk for him. But where a party, whether resident or non-resident, has an attorney in the action, the service of papers shall be



upon the attorney instead of the party. But if the attorney shall have removed from the state, such service may be made upon him personally either within or without the state, or by mail to him at his place of residence, if known, and if not known, then by mail upon the party, if his residence is known, whether within or without the state. And if the residence of neither the party or attorney are known, the service may be made upon the clerk for the attorney.

**§8458. Personal Service Required of Summons or Contempt Process. §23.** The provisions of the four preceding sections do not apply to the service of a summons or other process, or of any paper to bring a party into contempt.

**§8459. Amendment of Notice and Proceedings. §24.** A notice or other paper is valid and effectual though the title of the action in which it is made is omitted, or it is defective either in respect to the court or parties, if it intelligently refers to such action or proceedings; and in furtherance of justice, upon proper terms, any other defect or error in any notice or other paper or proceeding may be amended by the court, and any mischance, omission or defect relieved within one year thereafter; and the court may enlarge or extend the time, for good cause shown, within which by statute any act is to be done, proceeding had or taken, notice of paper filed or served, or may, on such terms as are just, permit the same to be done or supplied after the time therefor has expired, except that the time for bringing a writ of error or appeal shall in no case be enlarged, or a party permitted to bring such writ of error or appeal after the time therefor has expired.

**Amendment of pleadings, §8332; proceedings, §8336.**

Court may extend time for filing exceptions to referee's report or permit amendments *Pederson v. Parke*, 68 W. 482.

Time improperly extended to file motion for new trial but court having inherent power to review evidence, held not error, *Sylvester v. Olson*, 63 W. 285.

Court may extend time for filing motion for a new trial after the time has expired,

*Bailey v. Drake* 12 W. 99.

Exceptions to findings of fact and conclusions of law must be taken within five days after their filing. the court can not extend the time, *National Bank of Commerce v. Seattle Pickle Etc. Works* 15 W. 126.

§8229 does not destroy the power of the court under the above section to extend the time for filing motion for a new trial, *Leavenworth v. Billings* 26 W. 1.

**§8460. Defendant May Resist Plaintiff's Claim Without Formal Answer. §25.** A defendant who has appeared may, without answering, demand in writing an assessment of damages, of the amount which the plaintiff is entitled to recover; and thereupon such assessment shall be had or any such amount ascertained in such manner as the court on application may direct, and judgment entered by the clerk for the amount so assessed or ascertained.

Showing required of plaintiff in default cases, §8109.

**§8461. Computation of Time. §26.** The time within which an act is to be done shall be computed by excluding the first day and including the last. If the last day falls on a Sunday, it shall be excluded.

"Exclusive of the day of service" omitted that a judgment entered on Monday was from form not fatal, *Spokane Merchants Irregular, Wheeler v. Moore* 10 W. 309. *Assn. v. Acord* 99 W. 674.

Holiday after Sunday, last day, both excluded, *Hidden v. Washington-O. Corp.* 217 Fed. 303.

Computation of time, §7435.

Last day to answer was Sunday; held,

Service by mail sufficient if posted so as to reach destination within time prescribed, *Bank of Shelton v. Willey* 7 W. 535.

Intervening holiday does not extend time, *Thompson v. Huron Lum. Co.* 5 W. 527.

**§8462. Publication, Manner of Service By. §27.** The publication of legal notices required by law, or by an order of a judge or court, to be published in a newspaper once in each week for a specified number of weeks, shall be made on the day of each week in which such newspaper is published.

Publication to be had on day of week paper is issued, §8462.

Supplementary—AN ACT relating to legal publication. Approved March 3, 1893. Laws '93 p 62.

**§8463. In Publications Newspapers to Be Designated by Parties.** §1. In any suit or proceeding, in any court of this state, requiring a legal publication, said publication shall be made in any newspaper, of general circulation in the county, designated by the party or his attorney, at whose instance the said publication is made. A tender of a receipt from the publisher of the said newspaper, as full payment for said publication, shall be accepted by the sheriff, or court, as payment in lieu of the cash payment of fees for same.

**AN ACT relating to publications in newspapers, authorized or required by law.** Approved March 10, 1917. Laws '17 p 219.

**§8464. Six Months' Prior Existence of Newspaper Necessary.** §1. Whenever any advertisement, notice, summons or other document is required by law to be published in a newspaper the same shall be published in

**AN ACT relating to and regulating the publication of legal and other official notices and fixing the fees therefor.** L. '21 ch. 99.

**§8464-1. English Newspapers Required.** §1. No newspaper shall be considered a legal newspaper for the publication of any advertisement, notice, summons, report, proceeding or other official document now or hereafter required by law to be published unless such newspaper shall have been published in the English language continually (legal holidays and Sundays excepted) as a daily or weekly newspaper, as the case may be, in the city or town where the same is published at the time of the publication of such official document, for at least six months prior to the date of such publication, and shall be printed either in whole or in part in an office maintained at the place of publication: Provided, That in case of the consolidation of two or more newspapers such consolidated newspaper shall be considered a legal newspaper if either or any of the papers so consolidated would be a legal newspaper at the date of such legal publication, had not such consolidation taken place: Provided, further, That nothing in this section shall be construed to invalidate any publication in a foreign language prior to the taking effect of this act.

**§8464-2. Affidavit of Legal Newspaper.** §2. All legal and other official notices shall be published in a legal newspaper as defined in the preceding section and the affidavit of publication shall state that such newspaper is a legal newspaper and shall be prima facie evidence of that fact.

**§8464-3. Counties Where No Newspaper.** §3. The provisions of the two preceding sections shall not apply in counties where no newspaper has been published for a period of one year prior to the publication of such legal or other official notices.

**§8464-4. Rates for Publication.** §4. In all cases where publication of legal notices of any kind is required or allowed by law, the person or officer desiring such publication shall be required to pay on a basis of one dollar and forty cents per folio of one hundred words for the first insertion and eighty cents per folio of one hundred words for each subsequent insertion, or its equivalent in number of words: Provided, That any news-

**§8465. Suretyship May Be Tried.** §646.—646. When any action is brought against two or more defendants upon a contract, any one or more of the defendants being surety for the others, the surety may, upon a written complaint to the court, cause the question of securityship to be tried and determined upon the issues made by the parties at the trial of the cause, or at any time before or after the trial, or at a subsequent term, but such proceedings shall not affect the proceedings of the plaintiff.

Surety on joint and several bond may be sued separately under §8273, *Kanters v. Kotick* 102 W. 523.

Surety on bond with recital that it is statutory bond cannot be held as joint principal, *Pasco v. Pacific Coast Cas. Co.* 101 W. 496.

Principals cannot try equities among themselves, *First Nat. Bank v. Fowler* 54 W. 65.

The statute enlarges rights of sureties over the common law, *Denny v. Sayward* 10 W. 422.

Suretyship cannot be tried where principle a non-resident, *Kirkland Land etc. Co. v. Jones* 18 W. 407; nor in action where maker of promissory note is not a party, *Allen v. Chambers* 13 W. 327.

If payee was directed to apply funds in part payment by principal or surety, it is not defense pro tanto for surety, *Kirk-*



upon the attorney instead of the party. But if the attorney shall have removed from the state, such service may be made upon him personally either within or without the state, or by mail to him at his place of residence, if known, and if not known, then by mail upon the party, if his residence is known, whether within or without the state. And if the residence of neither the party or attorney are known, the service may be made upon the clerk for the attorney.

**§8458. Personal Service Required of Summons or Contempt Process. §23.** The provisions of the four preceding sections do not apply to the service of a summons or other process, or of any paper to bring a party into contempt.

~~Section of Notice and Proceedings. A notice or other~~

paper having a circulation of over 20,000 copies each issue may charge such additional rate as it may deem necessary and just and any person or officer authorizing the publication of any legal notice in such newspaper may legally pay such rate as is charged by such newspaper, and: Provided, further, That this section shall not apply to the amount to be charged for the publication of any legal notice or advertisement for any school district, village, town, city, county, state, municipal or quasi-municipal corporation or the United States government.

**§8464-5. Selection Where More Than One. §5.** Any summons, citation, notice of sheriff's sale, or legal advertisement of any description, the publication of which is now or may be hereafter required by law, may be published in any daily or weekly legal newspaper of general circulation published in the county where the action, suit or other proceeding is pending, or is to be commenced or had, or in which such notice, summons, citation, or other legal advertisement is required to be given: Provided, however, That if there be more than one legal newspaper in which any such legal notice, summons, citation or legal advertisement might lawfully be published, then the plaintiff or moving party in the action, suit or proceeding shall have the exclusive right to designate in which of such qualified newspaper such legal notice, summons, citation, notice of sheriff's sale or other legal advertisement shall be published.

**§8464-6. Holidays and Sundays Omitted. §6.** Where any law or ordinance of any incorporated city or town in this state provides for the publication of any form of notice or advertisement for consecutive days in a daily newspaper, the publication of such notice on legal holidays and Sundays may be omitted without in any manner affecting the legality of such notice or advertisement: Provided, That the publication of the required number of notices is complied with.

**§8464-7. Affidavit Shall State Fee. §7.** The affidavit of publication of all notices required by law to be published shall state the full amount of the fee charged for such publication and that the fee has been paid in full.

Assn. v. Acord 99 W. 674.

Holiday after Sunday, last day, both excluded, Hidden v. Washington-O. Corp. 217 Fed. 303.

Computation of time, §7435.

Last day to answer was Sunday; held,

Service by mail sufficient if papers so as to reach destination within time prescribed, Bank of Shelton v. Willey 7 W. 535.

Intervening holiday does not extend time, Thompson v. Huron Lum. Co. 5 W. 527.

**§8462. Publication, Manner of Service By. §27.** The publication of legal notices required by law, or by an order of a judge or court, to be published in a newspaper once in each week for a specified number of weeks, shall be made on the day of each week in which such newspaper is published.

Publication to be had on day of week paper is issued, §8462.

Supplementary—AN ACT relating to legal publication. Approved March 3, 1893. Laws '93 p 62.

**§8463. In Publications Newspapers to Be Designated by Parties. §1.** In any suit or proceeding, in any court of this state, requiring a legal publication, said publication shall be made in any newspaper, of general circulation in the county, designated by the party or his attorney, at whose instance the said publication is made. A tender of a receipt from the publisher of the said newspaper, as full payment for said publication, shall be accepted by the sheriff, or court, as payment in lieu of the cash payment of fees for same.

**AN ACT** relating to publications in newspapers, authorized or required by law. Approved March 10, 1917. Laws '17 p 219.

**§8464. Six Months' Prior Existence of Newspaper Necessary. §1.** Whenever any advertisement, notice, summons or other document is required by law to be published in a newspaper, the same shall be published in a newspaper which shall have been established, published and circulated continuously as a daily or weekly newspaper, as the case may be, in the city or town where the same is published at the time of the publication of such advertisement, notice, summons or other document, for at least six months prior to the date of such publication.

### SURETIES ACTIONS.

Ne exeat in favor of surety §8220.

**§8465. Surety May Cause Principal to Sue. §644.—644.** Any person bound as surety upon any contract in writing for the payment of money or the performance of any act when the right of action has accrued, may require by notice in writing the creditor or obligee forthwith to institute an action upon the contract.

Primary and secondary liability in negotiable instruments, §4263.

Surety may have ne exeat, §8220.

If principal a non-resident action cannot be required, *Seattle Crockery Co. v. Haley* 6 W. 302; *Kirkland Land etc. Co. v. Jones* 18 W. 407.

Notice must be in writing, *Kittridge v. Stegmeier* 11 W. 3.

Consent to dismissal of suit continues liability, *id.*

After execution has been returned satisfied surety is entitled to satisfaction of judgment though the parties have another arrangement, *Hanna v. Savage* 21 W. 555.

Demand and waiver of demand of action, *Rotting v. Cleman* 20 W. 116.

Payment in excess of contract to building contractor will release surety on contractor's bond, *Peters v. Mackay* 20 W. 172.

Judgment against sureties conclusive between them and principal with knowledge of action, *Denny v. Sagward*, 10 W. 422.

Sureties cannot escape liability on account of obligee's misrepresentation as to extent of liability, *Oregon Nat. Bank v. Gardner*, 13 W. 154.

Sureties discharged by taking new notes without notice to them, *Bank v. Harris*, 7 W. 139; see *Warburton v. Ralph*, 9 W. 537.

**§8466. When Surety Discharged. §645.—645.** If the creditor or obligee shall not proceed within a reasonable time to bring his action upon such contract, and prosecute the same to judgment and execution, the surety shall be discharged from all liability thereon.

One surety signing with agreement another was to sign and use paper, the latter cannot fail to sign, rescind transfer and sue the first, *Young v. Smith* 14 W. 565.

**§8467. Suretyship May Be Tried. §646.—646.** When any action is brought against two or more defendants upon a contract, any one or more of the defendants being surety for the others, the surety may, upon a written complaint to the court, cause the question of securityship to be tried and determined upon the issues made by the parties at the trial of the cause, or at any time before or after the trial, or at a subsequent term, but such proceedings shall not affect the proceedings of the plaintiff.

Surety on joint and several bond may be sued separately under §8273, *Kanters v. Kotick* 102 W. 523.

Surety on bond with recital that it is statutory bond cannot be held as joint principal, *Pasco v. Pacific Coast Cas. Co.* 101 W. 496.

Principals cannot try equities among themselves, *First Nat. Bank v. Fowler* 54 W. 65.

The statute enlarges rights of sureties over the common law, *Denny v. Sayward* 10 W. 422.

Suretyship cannot be tried where principle a non-resident, *Kirkland Land etc. Co. v. Jones* 18 W. 407; nor in action where maker of promissory note is not a party, *Allen v. Chambers* 13 W. 327.

If payee was directed to apply funds in part payment by principal or surety, it is not defense pro tanto for surety, *Kirk-*



land Land & Imp. Co. v. Jones 18 W. 407.

Surety may show suretyship, that payee ing is discharged, Harmon v. Hall 1 W. T. had notice and after request to sue in writ- 423.

**§8468. Judgment and Execution. §647.—647.** If the finding upon such issue be in favor of the surety, the court shall make an order directing the sheriff to levy the execution upon, and first exhaust the property of the principal before a levy shall be made upon the property of the surety, and the clerk shall endorse a memorandum of the order upon the execution.

**§8469. Surety Substituted in Execution. §648.—648.** When any defendant, surety in a judgment or special bail or replevin, or surety in a delivery bond or replevin bond, or any person being surety in any bond whatever, has been or shall be compelled to pay any judgment or any part thereof or shall make any payment which is applied upon such judgment by reason of such suretyship, or when any sheriff or other officer or other surety upon his official bond, shall be compelled to pay any judgment or any part thereof by reason of any default of such officer, except for failing to pay over money collected, or for wasting property levied upon, the judgment shall not be discharged by such payment, but shall remain in force for the use of the bail, surety, officer or other person making such payment, and after the plaintiff is paid, so much of the judgment as remains unsatisfied may be prosecuted to execution for his use.

Surety may have execution, §7902.

Injunction bond that several shippers would pay increased rates on several shipments, liability is several, and one surety paying is subrogated accordingly, Northern Pac. R. Co. v. Fidelity & Dep. Co. 74 W. 543.

If surety pays property levied upon must be held for him, Murray v. Meade 5 W. 693.

If execution on judgment is barred against principal it is barred against surety, Cathcart v. Bryant 28 W. 31.

**§8470. Contribution on Execution of Co-Sureties. §649.—649.** Any one of several judgment defendants, and any one of several replevin bail having paid and satisfied the plaintiff, shall have the remedy provided in the last section against the co-defendants and co-sureties to collect of them the ratable proportion each is equitably bound to pay.

Confession of judgment, §8102.

Appointment of guardians ad litem, §8269.

Co-surety compelled to contribute within six years—is equitable action, Lindblom v. Johnston 92 W. 171.

Surety on criminal bail in U. S. district

court has contribution by action, Belond v. Guy 20 W. 160.

Indebtedness of co-surety to another arises on payment by such co-surety so lands patented prior to such payment are liable on contract, Shoemaker v. Stimson 16 W. 1.

**§8471. Surety Shall Not Default Nor Confess Judgment. §650.—650.** No surety or his representative shall confess judgment or suffer judgment by default in any case where he is notified that there is a valid defense, if the principal will enter himself defendant to the action and tender to the surety or his representatives good security to indemnify him, to be approved by the court.

**§8472. Provisions Apply to Heirs, etc. §651.—651.** The foregoing provisions of this chapter shall extend to heirs, executors, and administrators of deceased persons, but the provisions of section six hundred and forty-five shall not operate against persons under legal disabilities.

## TRIALS, ACT 1893.

Chancery powers saved §8484.

Continuances §8485.

Court, trial by §8486; equity powers §8484.

Defendant not served until after judgment §8093b.

Eminent domain by private corporation §7650.

Eminent domain by cities §7551.

Evidence generally §7721.

Forcible entry and detainer cases §7982.

Habeas corpus cases §8038.

Issues defined—law and fact §8473.

Jury trials §8489; juries, list—drawing, etc. §8140.

Verdict §8526.

Mandamus cases on the facts §8193.

Partition of realty §8291.

Prostitution, houses as a nuisance §8236.

Referee, trial by §8531.

Tax foreclosures §6998.

Water rights under water code §§7213, 7216

**Substitute—AN ACT** to provide for the manner of commencing civil actions in superior courts, and bringing the same to trial. Approved March 15, 1893. General Repeal. Laws '93 p 407.

### ISSUES.

**§8473. Issues Defined—Law and Fact.** §28. Issues arise upon the pleadings when a fact or conclusion of law is maintained by one party and controverted by the other, they are of two kinds—First, of law; and, second, of fact.

**§8474. Issues of Law Defined.** §29. An issue of law arises upon a demurrer to the complaint, answer or reply.

**§8475. Issue of Fact Defined.** §30. An issue of fact arises—

First, Upon a material allegation in the complaint, controverted by the answer; or,

Second, Upon new matter in the answer, controverted by the reply; or

Third, Upon new matter in the reply, except when an issue of law is joined thereon; issues both of law and of fact may arise upon different and distinct parts of the pleadings in the same action.

### TRIALS.

**§8476. Trials Defined.** §31. A trial is the judicial examination of the issues between the parties, whether they are issues of law or of fact.

Trial by jury, §8484; in mandamus, §8192; by court—jury fee, §8531; by referee, §8488.

**§8477. Trial of Issue of Law.** §32. An issue of law shall be tried by the court, unless it is referred as provided by the statutes relating to referees.

*Chancery powers—trial by court §8484. v. Doherty 16 W. 382.*

This section is not a violation of the right of trial by jury, State ex rel. Mullen v. Doherty, id.

**§8478. Trial By Jury or Waiver of Jury.** §33. An issue of fact, in an action for the recovery of money only, or of specific real or personal property shall be tried by a jury, unless a jury is waived, as provided by law, or a reference ordered, as provided by statute relating to referees.

*Trials by jury §8488.*

Petition seeking to establish right of Indian wife to community property triable by court, not jury—advisory verdict—proof of marriage, Enos v. Hamblen 79 W. 583.

Request that action be treated as inequity without objection, neither party can complain, Newsome v. Allen 86 W. 678.

In action to restrain trespass jury properly denied, Palmer v. Peterson 56 W. 74.

Action on a contract for legal services seeking to apply specific fund is an action for recovery of specific personal property, Winston v. Crowe 28 W. 65.

Applies to proceeding in probate, Filley v. Murphy 30 W. 1.

**§8479. Trial By Court or Jury or Referee.** §34. Every other issue of fact shall be tried by the court, subject, however, to the right of the parties, to consent, or of the court to order, that the whole issue, or any specific question of fact involved therein, be tried by a jury, or referred.

Issues chiefly equitable, action so tried, Watson v. Watson 93 W. 512.

**§8480. Notice of Trial of Issue of Law or Fact—Clerk's Duties—Party Served May File Notice.** §35. At any time after the issues of fact are completed in any case by the service of complaint and answer or reply when necessary, as herein provided, either party may cause the issues of fact to be brought on for trial, by serving upon the opposite party a notice of trial at least three days before any day provided by rules of court for setting causes for trial, which notice shall give the title of the cause as in the pleadings, and notify the opposite party that the issues in such action will be brought on for trial at the time set by the court; and the party giving such notice of trial shall, at least three days before the day of setting such causes for trial file with the clerk of the court a note of issue containing the title of the action, the names of the attorneys, and the date when the last pleading was served; and the clerk shall thereupon enter the cause upon the trial docket according to the date of the issue.



In case an issue of law raised upon the pleadings is desired to be brought on for argument, either party shall, at least three days before the day set apart by the court under its rules for hearing issues of law, serve upon the opposite party a like notice of trial and furnish the clerk of the court with a note of issue as above provided, which note of issue, shall specify that the issue to be tried is an issue of law; and the clerk of the court shall thereupon enter such action upon the motion docket of the court. When a cause has once been placed upon either docket of the court, if not tried or argued at the time for which notice was given, it need not be noticed for a subsequent session or day, but shall remain upon the docket from session to session or from law day to law day until final disposition or stricken off by the court. The party upon whom notice of trial is served may file the note of issue and cause the action to be placed upon the calendar without further notice on his part.

It is in the discretion of the trial court to dismiss an action for want of prosecution, *Loring v. Maltble*, 64 W. 336.

Court shall fix time of pleading, §8367.

Notice of trial not jurisdictional—*walver*, *In re Western Ave*, *Seattle* 57 W. 290.

Notice of trial of a cause need not be given after notice of setting of trial has been given, *Western Security Co. v. Lafleur*, 17 W. 407.

New notice not necessary after cause remanded by Supreme Court, *Spokane Etc. Copper Co. v. Colfelt* 30 W. 628.

**Supplementary—AN ACT prescribing the powers and duties of district judges at chambers.** Approved October 18, 1881. C 81 §§2138-40.

**§8481. After Appearance Party Appearing to Be Notified—Service of Notice.** §2140. When a party to an action has appeared in the same, he shall be entitled to at least three days' notice of any trial, hearing, motion, application, sale or proceeding therein; which notice shall be in writing specifying the time and place where the same will be had or made and which shall be served on him or his attorney, but if neither such party nor his attorney reside in the county in which the action or proceeding is pending or where such application or motion is made, then service by mail may be had on such party or his attorney by mailing to either of them a copy of such notice, properly addressed with postage thereon fully prepaid, at least ten days before the time appointed for such hearing, application or sale. L. '97 282.

Appearance defined, §8451.

Ex parte change of venue after appearance vacated, *State ex Giles v. French* 102 W. 273.

An order for the transfer of a cause on the ground of prejudice of the presiding judge can only be vacated after a hearing had upon notice, *Garvey v. Skamser*, 69 W. 259.

After hearing on proposed findings judgment may be entered without notice, *Gould v. Austin* 52 W. 457.

After judgment party will be presumed to have had notice of trial, *Sellers v. Pacific etc. Co.* 34 W. 111.

Not necessary to give notice of findings and judgment, *Fisher v. Puget Sound etc. Co.* 34 W. 578.

Notice not necessary after judgment as in confirmation of execution sale, *Whitworth v. McKee* 32 W. 83.

Three days' notice is sufficient in motion to vacate judgment under §8336 (*Chehalis County v. Ellingson* 21 W. 638 overruled), *Spokane & Idaho Lumber Co. v. Stanley* 25 W. 53.

Party in default not entitled to notice, *Norris v. Campbell* 27 W. 654.

Where action is suspended on agreement with right of plaintiff to proceed on default, notice must be given, *Canada Settlers L. & Tr. Co. v. Murray* 20 W. 656.

Notice of application for receiver is properly served on attorney after appearance, *Haggard v. Sanglin* 31 W. 165.

**§8482. After Notice Either Party May Have Hearing and Judgment.** §36. Either party, after the notice of trial, whether given by himself or the adverse party, may bring the issue to trial, and, in the absence of the adverse party, unless the court for good cause otherwise directs, may proceed with his case, and take a dismissal of the action, or a verdict or judgment, as the case may require.

**§8483. Filing of Pleadings. §37.** All pleadings in any civil action shall be filed with the clerk of the court, on, or before, the day when the case is called for trial, or the day when any application is made to the court for an order therein, and in case the moving party shall fail, or neglect, to cause the pleadings to be filed with the clerk of the court, as above required, the adverse party may apply to the court, without notice, for an order on such moving party to file such pleadings forthwith, and for a failure to comply with such order the court may order the cause dismissed, unless good cause is shown for granting an extension of time within which to file such pleadings.

Court shall fix time of pleading, §8367. before judgment, *Ashcraft v. Powers* 22 W. 440.  
Complaint not served with summons filed within five days, §8436.

Judgment is not void if pleadings not filed, *Snohomish Land Co. v. Blood*, 40 W. 626. Court properly dismissed action for failure to file complaint without giving twenty-four hours' notice, *Washington Bank v. Horn* 24 W. 299.

Summons and complaint must be filed

### TRIALS, CODE 1881.

**§8484. Trial of Issues of Law and Fact—Chancery Powers Saved. §204.—204.** An issue of law shall be tried by the court, unless referred, as provided in this chapter. An issue of fact shall be tried by a jury, unless a jury trial be waived, or a reference be ordered, as provided in this chapter. The waiver of a jury, or agreement to refer, shall be by stipulation of the parties filed, or the oral consent of parties given in open court and entered in the records: Provided, That nothing herein contained shall be so construed as to restrict the chancery powers of the judges, or to authorize the trial of any issue by a jury, when the complaint alleges an equitable claim, and seeks relief solely upon the ground of the equities of the demand made by the pleadings in the action.

Waiver of jury, later act §8488.

Trial by jury in mandamus, §8192.

Trials—bringing to trial, §8476.

See note to Const., art. 1, §21.

Waiver of jury later provision, §8488; waiver in justice's court, §9556.

Action to cancel exchange of land, deed and mortgage, jury properly denied, *Reser v. Labude* 103 W. 228.

The above section is mandatory and damages cannot be assessed by the court without express waiver of jury, 3 W. T. 369, 595.

The giving of relief by procedure in the nature law remedies does not supplant equitable remedies, *Anderson v. Provident L. & T. Co.* 25 W. 20.

If equity action as in foreclosure of mechanic's lien fails timely objection and claim of jury trial must be made, *Hildebrandt v. Savage* 4 W. 524.

Action improperly begun in equity court may order trial at law *Surber v. Kittinger* 6 W. 240.

Issues properly triable by jury in equity case may be refused jury trial, *Dearborn Foundry Co. v. Augustine* 5 W. 67.

Prayer for alternative legal relief will not defeat trial in equity, *Konnerup v. Frandsen* 8 W. 551.

If equity case is tried by jury, case should proceed as law case, *Roberts v. Sabin* 14 W. 35.

One of several defendants cannot have jury trial though his matter proper subject. *Murray v. Okanogan Live Stock & D. B. Co.* 12 W. 257.

Equity case tried by jury without objection error cannot be urged on appeal, *Wegel v. Cascade Fire Ins. Co.* 12 W. 449.

Matters of record in another action as evidence, etc., should be brought into action they are sought to be used, *Sheppard v. Guisler* 10 W. 41.

Court has no power to try action unless jury is waived, *Johnson v. Goodtime* 1 W. T. 484; failure to demand is not waiver, *Meeker v. Gebhart* 3 W. T. 369.

All proceedings will be presumed to be at law until equity powers refused, *Brown v. Hazard* 2 W. T. 464.

Jury waived party will not be heard to say action was equitable, *Moore v. Walla Walla* 2 W. T. 184.

**§8485. Continuance. §205.—205.** A motion to continue a trial on the ground of the absence of evidence shall only be made upon affidavit, showing the materiality of the evidence expected to be obtained, and that due diligence has been used to procure it, and also the name and residence of the witness or witnesses. The court may also require, the moving party, to state, upon affidavit the evidence which he expects to obtain; and if the adverse party admit that such evidence would be given, and that it be considered as actually given on the trial, or offered and overruled as improper, the trial shall not be continued. The court, upon its allowance of the motion, may impose terms or conditions upon the moving party.



Continuance because of absence of witness to sustain applicant's case properly denied, *Hill v. Arthur* 103 W. 187.

Plaintiff refused second continuance having failed to comply with the terms of the first, *Reser v. Labude* 103 W. 228.

Continuances in criminal cases §9361.

Terms of continuance, §7465.

Continuances in criminal cases, §9361. Section applies to justices' courts, §9427.

If party could have obtained information by bill of particulars or interrogatories continuance will be denied, *Potts v. Potts* 81 W. 27.

Proper where complaint alleged shock from "an overhead trolley wire" and changed to "other overhead wires," *Roberts v. Tacoma R. & P. Co.* 59 W. 226.

Showing must be made though other party has had privilege of reopening case, *Gauthier v. Wood & Iverson* 49 W. 8.

Terms imposed held proper, *Warehime v. Schweitzer* 51 W. 299.

Affidavit used prior to trial precludes surprise as ground of continuance, *Merrill v. O'Bryan* 48 W. 415.

Plaintiff gave notice of amendment, court properly refused defendant continuance, *Dunlop v. Seattle R. & S. R. Co.* 47 W. 576.

Properly denied where testimony of party with one-third interest is not shown to be necessary, *Portland & Seattle R. Co. v. Ladd* 47 W. 88.

Refused after trial had been delayed and plaintiff admitted absent defendant would testify as alleged, *Traynor v. White* 44 W. 560.

Refusal of continuance on change of allegations in negligence of railroad company in running train held error *Wright v. Northern Pacific R. R. Co.* 38 W. 64.

Granting discretionary, *Knapp v. Order of Pendo* 36 W. 601.

Action dismissed because costs not paid—errors immaterial, *Soder v. Adams Hardware Co.* 38 W. 607.

Requiring defendant to give statement of evidence in criminal case is valid as to witnesses residing out of the state, *State v. Hutchinson* 14 W. 580.

Diligence in procuring witnesses must be shown, *id.*

Where evidence was not set out and showing witness could be had continuance properly denied, *Shannon v. Consolidated Etc. Mining Co.* 24 W. 119.

It is error to not grant continuance where complaint was amended on trial to include charge of additional fraud where deposition only came in use to disprove fraud, *Eldridge v. Mining Co.* 27 W. 297.

Continuance applied for because of absence of certain attorney was properly refused after default had been set aside and case set at instance of defendant, *Catlin v. Harris* 7 W. 542.

Continuance properly refused because of absence of one attorney of record when cause had been set for several days, *Zelinsky v. Price* 8 W. 256.

Continuance because of absence of defendant on account of sickness properly refused because showing not made, *McClellan v. Gaston* 18 W. 472.

Continuance because of absence of principal counsel after trial commenced properly refused, *Skagit Railway Etc. Co. v. Cole* 2 W. 37.

Party entitled to continuance on proper showing, *Robertson v. Woolley* 6 W. 156.

Diligence to be shown in procuring testimony—causes assigned on same day not tried is not ground, *Juch v. Hanna* 11 W. 676.

Affidavit must show diligence and that evidence was not cumulative, *Maggs v. Morgan* 30 W. 604.

## TRIALS—BY COURT.

Execution, supplementary proceedings §7952.

§8486. Findings and Conclusions to Be Filed. §246.—246. Upon the trial of an issue of fact by the court, its decisions shall be given in writing and filed with the clerk. In giving the decision, the facts found and the conclusions of law shall be separately stated. Judgment upon the decision shall be entered accordingly.

Mandamus granted to compel findings of dismissal 18 months after trial, *State ex Eilers Music House v. French* 100 W. 552.

Case remanded for findings, *Boe v. Hodgson Graham Co.* 97 W. 444.

Findings not necessary in proceeding to compel executor to act on claim, *In re King's Estate* 102 W. 299.

Findings in divorce, §7512.

Findings not required in hearing on petition to vacate judgment, *Frieze v. Powell* 79 W. 483.

Findings a necessity—supreme court will direct findings and entry of judgment, *Colvin v. Clark* 83 W. 376.

Affirmed, *id.* 96 W. 282.

Findings necessary—findings refused by courts others must be presented, *Western Dry Goods Co. v. Hamilton* 86 W. 478.

After case set court may order jury trial, *Fitzpatrick v. Newland* 81 W. 401.

Eminent domain but issue of ownership, held findings not necessary, *Olympia v.*

Lemon 93 W. 508.

Findings necessary to support judgment—error cannot be predicated on failure to make findings if none proposed, Harold v. Toomey 92 W. 297.

Findings in equity case not necessary to trial de novo on appeal, Soboda v. Nolf & Co. 91 W. 446.

Incomplete findings in equity case sufficient, Cook v. Washington-Oregon Corporation 84 W. 68.

Findings in equity not supporting judgment, evidence not presented to support it, is fatal, Katterhagen v. Meister 75 W. 112.

Insufficiency of findings immaterial if evidence supports judgment, Blair v. Wilkeson Coal & Coke Co. 54 W. 334.

One specification of findings on double charge in disbarment of attorney sufficient, State ex rel. Hardin v. Grover 47 W. 39.

Judgment at trial for defendant may be changed for plaintiff in written findings, Russell v. Schade Br'g. Co. 49 W. 362.

Findings incomplete in equitable action sufficient, Gould v. Austin 52 W. 457; none necessary, Clamberg v. Copeland 52 W. 580; affirmed, 61 W. 458.

Not necessary in confirmation of local improvement assessment, Brown v. Seattle 57 W. 314.

Findings not necessary in non-suit, Broderius v. Anderson, 54 W. 591.

Case reversed because no findings made. No evidence taken upon appeal, Sproul v. Houston 42 W. 106.

Findings in action at law not necessary if affirmative relief not granted, Slayton v. Felt 40 W. 1.

For appeal findings should be requested, *id.*

Separate findings and conclusions not required in probate cases, In re Farnham's Estate 41 W. 570.

Findings stand as a verdict and must be supported by evidence, Sheehan v. Levy 1 W. 155.

When findings not required in case tried without a jury judgment may be had without findings, Wilson v. Aberdeen 25 W. 614.

Findings and conclusions need not be under separate covers, Shepard v. Gove 26 W. 452.

Exception that findings and conclusions are combined in one must be specific, Ach v. Catter 21 W. 140.

Findings are unnecessary in equitable actions, Knowles v. Rogers 27 W. 211; Wintermute v. Carner 8 W. 585.

Findings not required in non-suit in jury trial, Barkley v. Barton 15 W. 33.

Findings that the facts set forth in the complaint are true is not sufficient, especially when reply that one allegation is not true, Bard v. Kleeb 1 W. 371.

Findings "that there is not sufficient evidence to support the plaintiff's complaint"

**§8487½ Order of Trial.** §247.—247. The order of proceedings on a trial by the court shall be the same as provided in trials by jury. The finding of the court upon the facts shall be deemed a verdict, and may be set aside in the same manner and for the same reason as far as applicable, and a new trial granted.

Order of trial by jury, §8504; setting aside findings, §8224.

Qualifications, drawing etc. jurors generally, §8140.

and "that the defendant's allegations are true" is not sufficient, King County v. Hill 1 W. 404.

Findings should cover all the issues and not merely those sufficient to support the judgment, Potwin v. Blasher 9 W. 460.

When the court finds facts as to all defendants it is not error to refuse to find the same facts as to one of the defendants, Gaffney v. Megrath 11 W. 456.

Judgment in an action at law tried by the court cannot be had until findings are filed, Sadler v. Niesz 5 W. 182.

The Supreme Court will not reverse finding when there is evidence to support it, Baker Etc. v. McAllister 2 W. T. 48.

Request must be made for findings, their absence will not reverse case on appeal, Walsh v. Bushnell 26 W. 576.

If case reversed because referee has not made findings he may make findings on evidence already taken, Park v. Mighell 7 W. 304.

Findings stand as verdict and will not be disturbed if there is evidence to sustain them, Second Nat. Bank v. Hatch 24 W. 421.

Error cannot be predicated on inconsistency of two sets of requested findings, Sackman v. Thomas 24 W. 660.

Refusal to make findings on matters not disputed in pleadings is not error, Peterson v. Johnson 20 W. 497.

Findings not necessary in dismissal of action, Noyes v. King County 17 W. 417.

In non-suit if findings obscure error cannot be predicated, Thorne v. Joy 15 W. 83.

Request for findings must be made or error cannot be predicated for failure to make them, Davis v. Ford 15 W. 107.

Party obtaining decree is responsible for findings and will not be heard to complain if they are insufficient, Watson v. Sawyer 12 W. 35.

Failure to make finding in the absence of timely request is not ground of appeal.

Request should be for general and not particular finding, Remington v. Price 13 W. 76.

Findings may be signed in the absence of the other party when his findings have been rejected, Lamona v. Cowley 31 W. 297.

Judgment sustained by proofs though reasons given by court are bad, Dillon v. Spokane 3 W. T. 498.

Findings not required in equity cases, White Crest Canning Co. v. Sims 30 W. 374.

Findings control conclusions and judgment must follow findings, Gerhard v. Worrell 20 W. 492.

Findings by the court stand as a special verdict, will not be set aside if there is any evidence to support them, Reynolds v. Dexter Horton & Co. 2 W. 185.

Application to criminal cases, §9362.  
Open venire by stipulation, §8156.



## TRIALS—BY JURY.

Jury, drawing—list, etc. §8140.  
Crimes respecting juries §9052.

Crime, juror accepting bribe §9049; giving  
bribe §9047.

**AN ACT** relating to jury trials in the Superior Court, providing for the payment by litigants of certain jury fees and repealing §5028 of Ballinger's Annotated Codes and Statutes of the State of Washington. Approved March 6, 1903. Laws '03 p 50.

**§8488. Demand for Jury—Fee.** §245. In all civil actions triable by a jury in the superior court any party to the action may, at or prior to the time the case is called to be set for trial, serve upon the opposite party or his attorney, and file with the clerk of the court a statement of himself, or attorney, that he elects to have such case tried by jury. At the time of filing such statement such party shall also deposit with the clerk of the court \$12.00, which deposit, in the event that the case is settled out of court prior to the time that such case is called to be heard upon trial, shall be returned to such party by such clerk. Unless such statement is filed and such deposit made, the parties shall be deemed to have waived trial by jury, and consented to a trial by the court. Provided, That, in the superior courts of counties of the first class, such party shall serve and file such statement, in manner herein provided, at any time not later than two days before the time the case is called to be set for trial. L. '09 715.

Constitution provides waiver, Const., Art. 1, §21.

Trial by court in criminal cases, §9371.

Proceeding to trial without jury after demanding jury trial held waiver, *Alexander v. Mentzer* 91 W. 552.

Court has discretion to allow jury after case is called to be set for trial, *Peterson v. Arland* 79 W. 679.

Personal judgment on failure of loggers' lien valid if jury not demanded, *Dolan v. Cain* 59 W. 259.

Jury trial discretionary under the statute, *Sholin v. Skamania Boom Co.* 56 W. 303.

Verdict waived where motion for judgment and discharge of jury and plaintiff moves for directed verdict, *Easterly v. Mills* 54 W. 356.

Verdict of jury advisory in equity—special findings do not control, *Leitch v. Young* 60 W. 446.

Applies to condemnation cases, *Chelan County v. Navarre* 38 W. 684; affirmed, *Fruitland Irr. Co. v. Smith* 54 W. 185.

Waiver holds good for retrial after reversal on appeal, *Park v. Mighell* 7 W. 304.

Jury trial is waived by permitting action to be tried as equitable action, *Frye v. Hill* 14 W. 82.

**§8488a. Fee Part of Costs.** §2. The amount deposited by the party demanding a trial by jury shall be a part of the taxable costs in such action. The amounts received by the clerk on account of jury fees shall be accounted for as such other fees received.

**§8489. Trial by Jury Drawing and Filling Panel—Consent to Less Than Twelve Jurors.** §206.—206. When the action is called for trial, the clerk shall prepare separate ballots, containing the names of the jurors summoned, who have appeared, and not been excused, and deposit them in a box. He shall then draw from the box twelve names, and the persons whose names are drawn shall constitute the jury. If the ballots become exhausted, before the jury is complete, or if, from any cause, a juror or jurors be excused, or discharged, the sheriff, under the direction of the court, shall summon from the bystanders, citizens of the county as many qualified persons as may be necessary to complete the jury. Whenever it shall be requisite for the sheriff to summon more than one person at a time from the bystanders or body of the county, the names of the talesmen shall be returned to the clerk, who shall thereupon write the names upon separate ballots and deposit the same in the trial jury box, and draw such ballots separately therefrom, as in the case of the regular panel. The jury shall consist of twelve persons, unless the parties consent to a less number. The parties may consent to any number not less than three, and such consent shall be entered by the clerk on the minutes of the trial.

Arbitrarily selecting grand jury from as regular panel, *State v. Lattin* 19 W. 57; names drawn invalid, *State ex rel. Murphy v. Superior Court* 82 W. 284. *Redford v. Spokane Street Ry. Co.* 15 W. 419 distinguished.

Talesmen must have same qualifications Talesmen may be summoned though

some of those drawn from the panel do not appear, *State v. Holmes* 12 W. 169; *State v. Biles* 6 W. 186.

Court may order a second panel instead of summoning talesmen, *State v. Cushing* 17 W. 544.

Criminal case cannot be tried with less

than twelve jurors, *State v. Ellis* 22 W. 129.

Separation of jury after agreeing on verdict must appear of record to be considered on appeal, *Maling v. Crummey* 5 W. 222.

Court shall construe written instruments, *Tolmie v. Dean* 1 W. T. 47.

**§8490. Joining in Challenges—Peremptory Challenges.** §207.—207. Either party may challenge the jurors, but when there are several parties on either side, they shall join in a challenge before it can be made. The challenge shall be to individual jurors, and be peremptory or for cause. Each party shall be entitled to three peremptory challenges.

Antagonistic defendants in action for tort must join in peremptory challenges, *Crandall v. Puget Sound Tr., L. & P. Co.* 77 W. 37; defendants in condemnation, *Newell v. Loeb*, id. 182.

Separate challenge properly denied, *Colfax Nat. Bank v. Davis* 50 W. 92.

Abutters defendants in condemnation must join, *Manhattan Bldg. Co. v. Seattle* 52 W. 226.

Error in allowing fourth peremptory challenge harmless when jury not made partial and last juror passed for cause, *Creech v. Aberdeen*, 44 W. 72.

**§8491. Peremptory Challenge.** §208.—208. A peremptory challenge is an objection to a juror for which no reason need be given, but upon which the court shall exclude him.

**§8492. Challenge for Cause.** §209.—209. A challenge for cause is an objection to a juror, and may be either:

1. General; that the juror is disqualified from serving in any action; or
2. Particular; that he is disqualified from serving in the action on trial.

Exemptions and excuses, §8145; competency, §8151; service within one year, §8150.

Challenges in criminal cases, §9368.

It is improper to ask juror if he would give equal credit to witnesses of different

religious beliefs, *Horst v. Silverman* 20 W. 233.

Relation of jurors to attorneys in case may be investigated, *Northern Pac. R. R. Co. v. Holmes* 3 W. T. 369.

**§8493. General Cause of Challenge.** §210.—210. General causes of challenge are:

1. A conviction for a felony.
2. A want of any of the qualifications prescribed by law for a juror.
3. Unsoundness of mind, or such defect in the faculties of the mind, or organs of the body, as renders him incapable of performing the duties of a juror.

Challenge for service within one year §8150.

**§8494. Particular Cause of Challenge.** §211.—211. Particular causes of challenges are of two kinds:

1. For such a bias as, when the existence of the facts is ascertained, in judgment of law disqualifies the juror, and which is known in this code as implied bias.

2. For the existence of a state of mind on the part of the juror in reference to the action, or to either party, which satisfies the trier in the exercise of a sound discretion, that he cannot try the issue impartially and without prejudice to the substantial rights of the party challenging, and which is known in this code as actual bias.

Juror prejudiced against dancing challenged, plaintiff seeking to recover for injury returning from a dance, *Beach v. Seattle* 85 W. 379.

Juror not disqualified by answers on facts not in record, *State v. Gohl* 46 W. 408.

Juror concealed bias, answering falsely, new trial granted, *Heasley v. Nichols* 38

W. 485.

Juror states he has prejudice against personal injury case, but can try case on the evidence, held not subject to challenge, *Denham v. Washington Water Power Co.* 38 W. 354.

Coram nobis is not remedy for undisclosed bias after affirmance on appeal, *State v. Armstrong* 41 W. 601.

**§8495. Challenge for Implied Bias.** §212.—212. A challenge for implied bias may be taken for any or all of the following causes, and not otherwise:

1. Consanguinity or affinity within the fourth degree to either party.
2. Standing in the relation of guardian and ward, attorney and client, master and servant or landlord and tenant, to the adverse party; or being a member of the family of, or a partner in business with, or in the employment for wages, of the adverse party, or being surety or bail in the action called for trial, or otherwise, for the adverse party.



3. Having served as a juror on a previous trial in the same action, or in another action between the same parties for the same cause of action, or in a criminal action by the state against either party, upon substantially the same facts or transaction.

4. Interest on the part of the juror in the event of the action, or the principal question involved therein, excepting always, the interest of the juror as a member or citizen of the county or municipal corporation.

Juror not disqualified because of service in case of same nature, *State v. Austin* 83 W. 444. Client of attorney for one of the parties is not disqualified, *McCorkle v. Mallory* 30 W. 632.

Former employer of decedent is disqualified in murder trial, *State v. Coella* 3 W. 99. Business relations with prosecuting attorney does not disqualify juror, *State v. Boyce* 24 W. 514.

§8496. **Challenge for Actual Bias.** §213.—213. A challenge for actual bias may be taken for the cause mentioned in the second subdivision of section two hundred and eleven. But on the trial of such challenge, although it should appear that the juror challenged has formed or expressed an opinion upon what he may have heard or read, such opinion shall not of itself be sufficient to sustain the challenge, but the court must be satisfied, from all the circumstances, that the juror cannot disregard such opinion and try the issue impartially.

See notes to §9368.

Opinion against death penalty, §9369.

Juror had formed opinion and should have been excused *State v. Lattin* 19 W. 57.

Juror had read newspapers but had not formed opinion and challenge was properly refused, *State v. Giles* 8 W. 12.

Challenge should specify grounds, *State v. Biles* 6 W. 186.

Where juror admits impression as to merits of cause, he should not be permitted to state whether it is favorable to defend-

ant or not, *White v. Territory*, 1 W. 279.

Juror who has formed and expressed opinion that would require evidence to remove is disqualified, *State v. Coella*, 3 W. 99; *State v. Murphy*, 9 W. 204; *State v. Willcox*, 11 W. 215.

Juror who knows one of parties and would believe his statement when contradicted by one he did not know, may be challenged, *Stimson v. Sachs* 8 W. 391.

Juror having heard purported facts of killing soon after occurrence not disqualified, *State v. Coella*, 8 W. 512.

§8497. **Exemption From Service Is Not Cause of Challenge.** §214.—214. An exemption from service on a jury shall not be cause of challenge, but the privilege of the person exempted.

§8498. **Order and Manner of Peremptory Challenges.** §215.—215. The jurors having been examined as to their qualifications, first by the plaintiff and then by the defendant, and passed for cause, the peremptory challenges shall be conducted as follows, to-wit:

The plaintiff may challenge one, and then the defendant may challenge one, and so alternately until the peremptory challenges shall be exhausted. The panel being filled and passed for cause, after said challenge shall have been made by either party, a refusal to challenge by either party in the said order of alternation, shall not defeat the adverse party of his full number of challenges, but such refusal on the part of the plaintiff to exercise his challenge in proper turn, shall conclude him as to the jurors once accepted by him, and if his right be not exhausted, his further challenges shall be confined, in his proper turn to talesmen only.

Peremptory challenges in criminal cases, W. 201.

§9365.

If party has passed peremptory challenge he cannot return to it, *Poncin v. Furth* 15 W. 292. In criminal case the defendant and state alternate, two and one, *State v. Eddon* 8 W. 292.

§8499. **Order of all Challenges.** §216.—216. The challenges of either party shall be taken separately in the following order, including in each challenge all the causes of challenge belonging to the same class:

1. For general disqualification.
2. For implied bias.
3. For actual bias.
4. Peremptory.

§8500. **Exceptions to and Trial of Challenges.** §217.—217. The challenge may be excepted to by the adverse party for insufficiency, and if so, the court shall determine the sufficiency thereof, assuming the facts alleged therein to be true. The challenge may be denied by the adverse party, and if so, the court shall try the issue and determine the law and the facts.

**§8501. Evidence on Trial of Challenge.** §218.—218. Upon the trial of a challenge, the rules of evidence applicable to testimony offered upon the trial of an ordinary issue of fact shall govern. The juror challenged, or any other person otherwise competent, may be examined as a witness by either party. If a challenge be determined to be sufficient, or found to be true, as the case may be, it shall be allowed and the juror to whom it was taken excluded; but if determined or found otherwise, it shall be disallowed.

Latitude allowed in examination if for lence, Hoyt v. Independent etc. Co. 52 W. no other purpose than peremptory chal- 672.

**§8502. Trial May Be Made Orally.** §219.—219. The challenge, the exception and the denial may be made orally. The judge of the court shall note the same upon his minutes, and the substance of the testimony on either side.

**§8503. Oath of Jury.** §220.—220. As soon as the number of the jury has been completed, an oath or affirmation shall be administered to the jurors, in substance that they and each of them, will well, and truly try, the matter in issue between the plaintiff, and defendant, and a true verdict give, according to the law, and evidence as given them on the trial.

Oath in criminal cases, §9370.

**§8504. Order of Trial.** §221. When a jury has been sworn, the trial shall proceed in the following manner:

(1) The plaintiff shall briefly state the cause of action and the evidence by which he expects to sustain it. The defendant may in like manner state the defense, and the evidence he expects to offer in support thereof, but nothing in the nature of comments or argument shall be allowed in opening a case. It shall be optional with the defendant whether he states his case before or after the close of the plaintiff's evidence.

(2) The plaintiff, or the party upon whom rests the burden of proof in the whole action, must first produce his evidence; the adverse party will then produce his evidence.

(3) The parties then will be confined to rebutting evidence, unless the court shall consider that justice requires that evidence in the original case may then be offered.

(4) The court must reduce the charge to be given the jury to writing, and at the conclusion of the evidence he shall read his written charge to the jury. Either party may request such instructions as he deem material to the case, and the court may hear them upon the propriety of the requested instructions before finally settling the charge that he will give. If a stenographer shall be in attendance upon the trial of the cause, the court shall have the right to dictate the charge he desires to give to such stenographer, and to have the stenographer reduce the same to writing for him and a copy for each of the parties plaintiff and defendant. And the cost thereof shall be taxed as other costs in the action. When the charge shall have been given by the court, the plaintiff, or party having the burden of proof, may, by himself or one counsel, address the court and jury upon the law and facts in the case, after which the adverse party may address the court and jury in like manner, by himself and one counsel or by two counsel, and be followed by the party or counsel of the party first addressing the court. No more than two speeches on behalf of plaintiff or defendant shall be allowed. After the argument shall have been concluded, the jury shall retire to consider their verdict, and shall take with them to the jury room, among other matters proper to be taken to their jury room for further consideration by them, the written charge given them by the court. Either party, at any time before the hearing of a motion for a new trial may except to the instructions given by the court, or any part thereof. L. '09 184; L. '03 119.

Refusal of reopening case to all allow papers, §8515.

proof in chief for rebuttal is not error, Brown v. Jamison 102 W. 124.

Instructions to juries (court rules) §8431j.

Exceptions generally, §7809.

Applies to criminal cases, §9374.

Special findings, §8528; jury may take

Oral instruction by agreement of counsel valid, Smith v. Bowers 82 W. 80.

Counsel cannot read law to the jury, State v. Rholeder 82 W. 618.

Exceptions to refusal to instruct may be taken, Radburn v. Fir Tree Lum. Co. 83



W. 643.

Duty of counsel to request instructions—failure of court not error, *Hiscock v. Phinney* 81 W. 117.

Cautionary warnings by the court, not stating rules of law, are not "instructions," *Maryland Casualty Co. v. Seattle Electric Co.* 75 W. 430.

Errors in instructions not considered by trial court on motion for new trial will not be considered by supreme court, *State v. Neis* 74 W. 280.

Court gave oral instructions, held error, *State v. Burnam*, 71 W.

A supplemental oral instruction is error, *Raynor v. Tacoma R. & P. Co.*, 70 W. 133.

It is discretionary with the court to give a further instruction after argument of counsel, *State v. Brache*, 63 W. 396.

Merely relates to the time of taking exceptions to instructions, the manner thereof still being controlled by §7812, *State v. Peeples*, 71 W.

Exceptions to instructions taken immediately after jury retired are timely, *State v. Neis*, 68 W. 599.

Adding oral explanation to written instructions not error, *State v. Marion*, 68 W. 675.

Detailed statement by prosecution in murder case sustained, *State v. Pepoon* 62 W. 635.

Stenographer will be presumed under control of the court, *State v. Erickson* 54 W. 472.

Exemptions to instructions filed after trial are not in time—oral request for modification is not exception, *Gerber v. Indem. Co.* 61 W. 184.

Written exceptions filed but not considered by the court insufficient, *White v. Ratliff* 61 W. 383.

Written instructions when requested mandatory (§8504) has no application, *McIntosh v. Saw Mill Phoenix* 49 W. 152.

Stenographic report are written instructions (overruling *McIntosh v. Saw Mill Phoenix* 49 W. 152), *Sturgeon v. Tacoma Eastern R. Co.* 51 W. 124 followed 51 W. 482.

Charge in discretion of court when no requests made, *Duteau v. Seattle Elec. Co.* 45 W. 418.

Accused must state defense at close of state's case, *State v. King* 50 W. 312.

Report of stenographer for both parties is "instructions in writing," *Collins v. Huffman* 48 W. 184.

Written instructions mandatory, *McIntosh v. Saw Mill Phoenix* 49 W. 152.

Taking of instructions by private re-

porter will not dispense with written instructions, *State v. Mayo* 42 W. 540.

Criminal case, time of argument of counsel limited to 15 minutes, *Seattle v. Erickson* 55 W. 675.

Manner of taking exceptions unchanged, *Coffey v. Seattle Elec. Co.* 59 W. 686.

Attorney testifying cannot argue case, *Voss v. Bender* 32 W. 566.

Court should state the issues to the jury, *Lambert v. La Conner Etc. Co.* 37 W. 113.

When written instructions requested giving instructions partly written and partly oral is error, *State v. Miles* 15 W. 534.

Various instructions and refusal to give instruction discussed, *State v. Friedrich* 4 W. 204; *id* 2 W. 358.

Exceptions to instructions must be specific, *Meeker v. Gardella* 1 W. 139.

Each party must independently request written instructions—length of instructions, *Hencke v. Babcock* 24 W. 556.

It is error to refuse instruction when evidence tends to prove facts, *McGee v. Wineholt* 23 W. 748.

Instructions must be requested or error cannot be predicated, *Lownsdale v. Grays Harbor Boom Co.* 21 W. 542; *Howe v. West Seattle L. & I. Co.* 21 W. 594.

If no conflict in proofs court may take case from jury and give judgment, *Underwood v. Stack* 15 W. 497.

Court may when judgment should be given for plaintiff direct verdict instead of giving judgment *National Bank of Com. v. Galland* 14 W. 502.

Plaintiff entitled to directed verdict when there is no substantial contradiction of his testimony, *Squires v. Zumwalt* 12 W. 241.

Where evidence in defense is vague court may direct verdict for plaintiff, *Gurney v. Morrison* 12 W. 456.

Court may direct verdict for plaintiff, *Carmack v. Drum* 27 W. 382.

Where trial turns upon no facts other than the construction of a written agreement, court may dismiss jury and render judgment, *Murray v. Bush* 29 W. 662.

Where there are no disputed facts it is proper to discharge the jury, *West Seattle L. & I. Co. v. Novelty Mill Co.* 31 W. 435.

Reading of opinion of Supreme Court by counsel held not error, *Gallagher v. Town of Buckley* 31 W. 380.

Instructions defining preponderance of evidence approved, *Northern Pacific R. Co. v. Holmes* 3 W. T. 543.

If defendant waives argument plaintiff cannot make other than the first, *Seattle & Montana Ry. v. Roeder* 30 W. 244.

Supplementary—AN ACT prescribing the manner in which judges of the superior court shall direct judgment in cases tried before the court with a jury. Approved March 8, 1895. Laws '95 p 64.

§8505. Demurrer to Evidence. §1. In all cases tried in the superior court with a jury in which the legal sufficiency of the evidence shall be challenged, and the court shall decide as a matter of law, what verdict should be found, the court shall thereupon discharge the jury from further consideration of the case, and direct judgment to be entered in accordance with its decision.

Judgment non obstante veredicto error when any evidence, *Walling v. Elbert* 87 W. 489.

Non obstante veredicto, purposes, etc. *Forsyth v. Dow* 81 W. 137.

There must be neither evidence nor in

ference from evidence to sustain demurrer, *Fobes Supply Co. v. Kendrick* 88 W. 284.

Non-suit, §8122; constitution prohibits comment on the facts, Const., art. 4, §16.

If evidence conflicting new trial should be granted, *Messir v. McLean* 51 W. 140.

Facts admitted showing no negligence by defendant, verdict should be directed, *Johnson v. Great N. R. Co.* 49 W. 98.

Verdict is bar to another action, *McKim v. Porter* 60 W. 270.

If any evidence to sustain plaintiff demurrer should not be sustained, *Weir v. Seattle Electric Co.* 41 W. 657.

After verdict by entry of judgment non obstante veredicto, *Roe v. Standard Furniture Co.* 41 W. 546.

After motion of defendant sustained, plaintiff cannot take non-suit, *Dunkle v. Spokane Etc. Ry. Co.* 20 W. 254.

If there is any question jury should not be discharged *Rinear v. Skinner* 20 W. 541; *Spokane Etc. Lumber Co. v. Loy* 21

W. 501; *Kimball v. Cockrell* 23 W. 529.

Findings are not required on dismissal, *Fidelity Trust Co. v. Palmer* 22 W. 473.

Where action was on written contract to be construed by the court, court properly directed verdict for defendant *Creagh v. Equitable Life Assurance Society* 19 W. 108.

Where defendant contends that there is no question for the jury and the court directs verdict for the plaintiff, defendant cannot complain. *Knox v. Fuller* 23 W. 34.

Verdict directed for nominal damages jury cannot bring in greater verdict, *Trumbull v. School District* 22 W. 631.

Verdict directed for plaintiff, *Washington Nat. Bank v. Moyer* 22 W. 622.

Court erred in assuming function of jury, *Brookman v. State Ins. Co.* 18 W. 308.

Overruling of defendant's demurrer does not entitle plaintiff to judgment, *Browder v. Phinney* 30 W. 74.

Before statute court could dismiss, *Tolmie v. Dean* 1 W. T. 47.

**§8506. Special Findings of Law or Fact.** §222.—222. Any party may, when the evidence is closed, submit in distinct and concise propositions the conclusions of fact which he claims to be established, or the conclusions of law which he desires to be adjudged, or both. They may be written and handed to the court, or at the option of the court, oral, and entered in the judge's minutes.

Instructions to jury, §8504.

Directing jury to make special findings in discretion of court, *Hart Lum. Co. v. Rucker*, 20 W. 583; *Morrison v. N. P. Ry.*, 34 W. 70. See *McDougall v. Walling*, 15 W. 78; *Redford v. Spokane St. Ry.*, 9 W. 55; *Larson v. American B. Co.*, 40 W. 224.

Where no motion for nonsuit, and party submits special interrogatories on supposition that there was evidence against him, he cannot object to verdict on ground of no evidence, *Mitchell v. Matheson*, 23 W. 723.

**§8507. Court Shall Decide all Questions Incident to Trial and all Questions of Law.** §223.—223. All questions of law including the admissibility of testimony, the facts preliminary to such admission, and the construction of statutes and other writings, and other rules of evidence, are to be decided by the court, and all discussions of law addressed to it.

Jury reading law in jury room not given them by the court is misconduct, *Bouton-Perkins Lum. Co. v. Huston* 81 W. 678.

Counsel cannot read law to jury, *State v. Rholeder* 82 W. 618.

**§8508. Jury Shall Decide Questions of Fact in Issue.** §224.—224. All questions of fact other than those mentioned in the section preceding, shall be decided by the jury and all evidence thereon addressed to them.

**§8509. View by Jury.—Conduct.** §225.—225. Whenever in the opinion of the court it is proper that the jury should have a view of real property which is the subject of litigation, or of the place in which any material fact occurred, it may order the jury to be conducted in a body, in the custody of a proper officer, to the place which shall be shown to them by the judge or by a person appointed by the court for that purpose. While the jury are thus absent, no person other than the judge, or person so appointed, shall speak to them on any subject connected with the trial.

In criminal case, court properly refused request that jury go to bedside of witness, *State v. Mallahan*, 66 W. 21.

Applies to condemnation proceedings, *Sedro-Woolley v. Willard* 71 W. 646.

View in criminal cases, §9376.

View in condemnation by city—person to conduct jury, *In re Jackson Street* 47

W. 243.

View by jury in federal court is in court's discretion—is reviewable, *Murhard Estate Co. v. Portland & Seattle R. Co.* 163 Fed. 194.

View in damage cases discretionary, *Klepsch v. Donald* 4 W. 436.

**§8510. Jury Allowed to Separate.—Conduct.** §226.—226. The jurors may be kept together in charge of a proper officer, or may, in the discretion of the court, at any time before the submission of the cause to them, be permitted to separate; in either case they may be admonished by the court



that it is their duty not to converse with any other person, or among themselves, on any subject connected with the trial, or to express any opinion thereon, until the case is finally submitted to them.

Allowing woman juror to occupy judge's chambers during intermission while other jurors occupied jury room is not separation, *State v. Harris* 99 W. 475.

Jury allowed to separate, later act §8158.

How jury kept, later section, §8158; in criminal cases, §9375.

Sealed verdict not allowed in criminal cases, *State v. Rogan* 18 W. 43.

Jury may be allowed to separate before case submitted, *State v. Johnny Tommy* 19 W. 270.

Allowing jurors to retire from room is not a separation, *Edwards v. Territory* 1 W. T. 195.

§8511. **Disability of Juror—Procedure.** §227.—227. If after the formation of the jury, and before verdict, a juror becomes sick, so as to be unable to perform his duty, the court may order him to be discharged. In that case, unless the parties agree to proceed with the other jurors, a new juror may be sworn and the trial begin anew; or the jury may be discharged and a new jury then or afterwards formed.

Discharge of jury without verdict, §8517.

§8512. **Juror as Witness—Conduct.** §228.—228. A juror may be examined by either party as a witness, if he be otherwise competent. If he be not so examined, he shall not communicate any private knowledge or information that he may have of the matter in controversy, to his fellow jurors, nor be governed by the same in giving his verdict.

Competency of witnesses, §7721.

§8513. **Deliberations of Jury.** §229.—229. After hearing the charge the jury may either decide in the jury box or retire for deliberation. If they retire, they must be kept together in a room provided for them, or some other convenient place, under the charge of one or more officers, until they agree upon their verdict, or are discharged by the court. The officer shall, to the best of his ability, keep the jury thus separate from other persons, without drink, except water, and without food, except ordered by the court. He must not suffer any communication to be made to them, nor make any himself, unless by order of the court, except to ask them if they have agreed upon their verdict, and he shall not, before the verdict is rendered, communicate to any person the state of their deliberations or the verdict agreed on. How jury kept, later section §8158.

§8514. **Food and Lodging for Jury.** §230.—230. If, while the jury are kept together, either during the progress of the trial or after their retirement for deliberation, the court order them to be provided with suitable and sufficient food and lodging, they shall be so provided by the sheriff, at the expense of the county.

§8515. **What Papers May Be Used in Deliberations.** §231.—231. Upon retiring for deliberation, the jury may take with them the pleadings in the cause, and all papers which have been received as evidence on the trial, (except depositions,) or copies of such parts of public records or private documents given in evidence, as ought not, in the opinion of the court, to be taken from the person having them in possession.

Instructions may be taken, §8504.

Exhibits may be taken to jury room *State v. Simmons* 52 W. 132.

Inadvertent presence of depositions in jury room if jury did not consider them is harmless, *Wintermute v. Standard Furniture Co.* 53 W. 539.

Record of insanity inquiry may be taken to jury room, *State v. Champoux* 33 W. 339.

It is not error for jury to take original of amended complaint, *Swadling v. Barne-son* 21 W. 699.

§8516. **Return of Jury for Instructions.** §232. After the jury have retired for deliberation, if they desire to be informed of any point of law arising in the case, they may require the officer having them in charge to conduct them into court. Upon their being brought into court the information required shall be given in the presence of, or after notice to, the parties or their attorneys. L. '91 103.

Action of court in entering jury room during deliberations is misconduct warranting reversal, *State v. Wroth*, 15 W. 621.

Recalling jury after it had been deliberating and insinuating what verdict should be is reversible error, *State v. Thield*, 36 W. 365.

**§8517. Discharge Before a Verdict—For What Causes.** §233.—233. The jury may be discharged by the court on account of the sickness of a juror, or other accident or calamity requiring their discharge, or by consent of both parties, or after they have been kept together until it satisfactorily appears that there is no probability of their agreeing.

Disability of juror, procedure, §8511.

**§8518. Verdict Prevented by Discharge—New Trial Shall Be Had.** §234. In all cases where a jury are discharged or prevented from giving a verdict, by reason of accident or other cause, during the progress of the trial, or after the cause is submitted to them, the action shall thereafter be for trial anew. L. '91 103.

**§8519. Court Shall Be Kept for Jury.** §235.—235. While the jury are absent the court may adjourn from time to time, in respect to other business, but it is nevertheless to be deemed open for every purpose connected with the cause submitted to the jury, until a verdict is rendered or the jury discharged. A final adjournment of the court discharges the jury.

Court always in session for purpose, §2700; Const., art. 4, §6.

**§8520. Jury Conducted Into Court to Render Verdict—Roll Call.** §236.—236. When the jury have agreed upon their verdict, they shall be conducted into court by the officer having them in charge. Their names shall then be called, and if all do not appear, the rest shall be discharged without giving a verdict.

**§8521. Foreman Shall Answer.** §237.—237. If the jury appear, they shall be asked by the court or the clerk whether they have agreed upon their verdict, and if the foreman answer in the affirmative, he shall, on being required declare the same.

**§8522. Jury May Be Polled—Verdict May Be Corrected.** §238.—238. When a verdict is given and before it is filed, the jury may be polled at the request of either party, for which purpose each shall be asked whether it is his verdict; if any juror answer in the negative the jury shall be sent out for further deliberation. If the verdict be informal or insufficient, it may be corrected by the jury under the advice of the court, or the jury may again be sent out.

Polling jury—verdict, by

tions to be addressed to each individual juror, State v. Cushing 17 W. 544.

This section does not require instruc-

**§8523. Verdict to Be in Writing and Filed—Jury to Be Discharged.** 239.—239. When the verdict is given and is such as the court may receive, and if no juror disagree or the jury be not again sent out, the clerk shall file the verdict. The verdict is then complete and the jury shall be discharged from the case. The verdict shall be in writing, and under the direction of the court shall be substantially entered in the journal as of the day's proceedings on which it was given.

Court deemed always open for receiving verdict, Edwards v. Territory, 1 W. T. 195.

Jury may request court to correct clerical error in form of verdict submitted to them Marine Bank v. Young, 5 W. 394.

Verdict for plaintiff without naming defendant sufficient, Blue v. McCabe, 5 W. 125.

Verdict assessing "damages at \$3,050, and legal interest," bad for uncertainty—effect, Meeker v. Gardella, 1 W. 139; West-

ern M. Co. v. Blanchard, id. 230; but see Brown v. Gillett, 39 W. 495.

Where verdict omits attorney's fee provided in note, court may insert, Hardy v. Hohl, 11 W. 1; see Yakima Nat. Bank v. Knipe, 6 W. 348.

No error in sending jury back with pleadings which had not been given them originally, before verdict filed, Matthews v. Spokane, 50 W. 107.

**Supplementary—AN ACT providing for the finding and return of verdicts in civil cases, by ten or more jurors.** Approved March 8, 1895. General repeal. Laws '95 p 59.

**§8524. Verdict By Ten Jurors.** §1. That in all trials by juries of twelve in the superior courts, except criminal trials, when ten of the jurors agree upon a verdict, the verdict so agreed upon, shall be signed by the foreman, and the verdict shall stand as the verdict of the whole jury, and have all the force and effect of a verdict agreed to by twelve jurors.

Constitutional provision, Const., Art. 1, jury may try for verdict by lot, Watson v. Reed 15 W. 440.

§21.

When there is no agreement to be bound.



**§8525. Jury May Be Polled. §2.** That when the verdict is returned into court either party may poll the jury, and if ten of the jurors answer that it is the verdict said verdict shall stand. In case ten of the jurors do not answer in the affirmative the jury shall be returned to the jury room for further deliberation.

Applies to sealed verdict—jury separating, returned for further deliberation, *Coughlin v. Weeks* 75 W. 568.

### VERDICT.

**§8526. General and Special Verdicts. §240.—240.** The verdict of a jury is either general or special. A general verdict is that by which the jury pronounces generally upon all or any of the issues either in favor of the plaintiff or defendant. A special verdict is that by which the jury find the facts only, leaving the judgment to the court.

Ejectment, etc., §7521.

Eminent domain cases by cities §7555.

Entry of judgment, §8081.

Verdict in lump sum on several causes sustained, *Yamamoto v. Puget Sound Lum. Co.* 84 W. 411.

Quotient verdict sustained, *Conover v. Neher-Ross Co.* 38 W. 172.

Uncertain verdict cannot be aided by pleadings denied, *Grays Harbor Boom Co. v. Lytle Logging Co.* 38 W. 88.

Quotient verdict ratified by jurors is

**§8527. Verdict in Replevin. §241.—241.** In an action for the recovery of specific personal property, if the property has not been delivered to the plaintiff, or the defendant by his answer claim a return thereof, the jury shall assess the value of the property if their verdict be in favor of the plaintiff, or if they find in favor of the defendant and that he is entitled to a return thereof, they may at the same time assess the damages, if any are claimed in the complaint or answer, which the prevailing party has sustained, by reason of the detention or taking and withholding such property.

Replevin, §8421; judgment, §8083.

A verdict assessing the damages of the plaintiff at fifteen hundred dollars is defective, *Quinn v. Parke & Lacy Co.* 5 W. 276.

The jury should assess the value of the property whether the verdict be for the

good, *Bell v. Butler* 34 W. 131.

Verdict must be in accordance with case made by the parties and cannot go outside, *Tilden v. Gordon & Co.*, 25 W. 593.

On failure of jury to make special findings in equity case court may make them, *Land Mtg. Co. v. Nicholson* 24 W. 258.

Judge properly filled in amount when contest was on liability of the parties—correction of verdict, *Marine Savings Bank v. Young* 5 W. 394.

plaintiff or defendant. *Meeker v. Johnson* 3 W. 247.

Finding that plaintiff was owner of the property and that it was of the value of three hundred thirty dollars is sufficient, *Hall v. Law Guarantee & T. Society* 22 W. 305.

**§8528. Jury May Render General or Special Verdict—Special Findings. §242.—242.** In every action for the recovery of money only, or specific real property, the jury, in their discretion, may render a general or special verdict. In all other cases, the court may direct the jury to find a special verdict in writing upon all or any of the issues, and in all cases may instruct them, if they render a general verdict, to find upon particular questions of fact, to be stated in writing, and may direct a written finding thereon. The special verdict or finding shall be filed with the clerk and entered in the minutes.

Application of statute in federal courts, *Spokane & I. E. R. Co. v. Campbell* 241 U. S. 497.

Special findings construed so as to harmonize them, *State ex rel. Upper v. Hanna* 87 W. 29.

In action for damages for fraud verdict may be directed for each of several plaintiffs, *Lebovitz v. Cogswell* 83 W. 174.

Submission to jury discretionary, *Sud-den & Christenson v. Morse* 55 W. 372.

Party propounding special interrogatories cannot complain that there is no evidence to sustain them, *Dixon v. Bausman* 17 W. 304.

Two forms of general verdict in ejectment in the absence of special findings,

*Stangair v. Roads* 46 W. 613.

Will be construed to sustain general verdict *Grant v. Spokane Traction Co.* 47 W. 112.

Controls against only facts on which general finding can be based, *Crawley v. Northern Pac. R. Co.* 46 W. 85.

Special finding must be on proper facts, *Evans v. Oregon & W. R. Co.* 58 W. 429.

Special findings without evidence and contrary other evidence disregarded, *Muehlman v. Spokane & Inland R. Co.* 58 W. 327.

Not necessary and do not control in equity case, *Leitch v. Young* 60 W. 446.

Special findings must be material, *Olmstead v. Olympia* 59 W. 147.

In discretion of trial court, *Butler v. Supreme Court Foresters* 60 W. 171.

Submission of special interrogatories is in discretion of trial court, *Bailey v. Tacoma Traction Co.* 16 W. 48.

Submission of special interrogatories is in the discretion of the trial court, *Walker v. McNeill* 17 W. 582; *Pencil v. Home Ins. Co.* 3 W. 485.

Special findings must be irreconcilable to defeat general verdict, *Gaudie v. Northern Lumber Co.* 34 W. 34.

Answering "doubtful" to two findings held harmless, *Norman v. Hopper* 38 W. 415.

A case in which a special finding should

**§8529. Special to Control General Findings.** §243.—243. When a special finding of facts shall be inconsistent with the general verdict, the former shall control the latter, and the court shall give judgment accordingly.

Special findings construed to support general verdict, *Cameron v. Stack-Gibbs Lum. Co.*, 68 W. 539.

Special findings must be inconsistent, to defeat general verdict, *Campbell v. Jones*, 73 W. 688.

Inconsistent special findings held to control general verdict, *Stratton v. Nichols Lumber Co.* 39 W. 323.

Technical special finding will not control general verdict, *Wallerich v. Puget Sound Warehouse Co.* 38 W. 501.

Where several special findings are less in amount than the general verdict the special findings control. *Engstrom v. Merriam* 25 W. 73.

A general verdict against co-partners and a finding as to an agreement which has none of the elements of partnership general verdict should be set aside, *Otti-*

be required, *McDougall v. Walling* 15 W. 78.

Special interrogatory in trespass where treble damages may be allowed, approved, *Gardner v. Lovegren* 27 W. 356.

General verdict should not be received until special findings submitted are made, *Redford v. Spokane Street Ry.* 9 W. 55.

Jury failed to return special findings and when directed by the court foreman wrote them out, parties being present and not objecting are concluded, *Mounts v. Goranson* 29 W. 261.

Submission of interrogatories for special findings is discretionary with court, *Columbia Co. v. Hawthorne* 3 W. 353.

*son v. Edmonds* 15 W. 362.

Expression of opinions on a legal proposition will not affect a general verdict, *Silby v. Frost* 3 W. T. 388.

Special findings control general verdict, *Pepperall v. City Park Transit Co.* 15 W. 176.

Special findings control verdict, *Mitchell v. Matheson* 23 W. 723.

A case wherein special findings control a general verdict, *Stewart v. Walla Walla Etc. Pub. Co.* 1 W. 521.

Special findings must be material to control, *Mercler v. Travelers Ins. Co.* 24 W. 147.

Special verdict susceptible of double construction will be construed to sustain general verdict, *McCorkle v. Mallory* 30 W. 632.

**§8530. Verdict for Either Party—Verdict After Judgment on Pleadings.** §244. When a verdict is found for the plaintiff in an action for the recovery of money, or for the defendant when a set-off for the recovery of money is established beyond the amount of the plaintiff's claim as established, the jury shall also assess the amount of the recovery; they may also, under the direction of the court, assess the amount of the recovery when the court gives judgment for the plaintiff on the pleadings. L. '91 103.

If verdict is compromise or by mistake court may refuse it and direct jury to find full amount or nothing, *Frost v. Ainslie Lumber Co.* 3 W. 241; see, *Casety v. Jamison* 35 W. 478.

## TRIALS—BY REFEREE.

Execution, proceedings supplementary §7927.

Partition of realty §8292.

Registration of land titles §5751.

State hydraulic engineer has powers of §7222.

**Supplementary—AN ACT relating to referees.** Approved February 24, 1891. Laws '91 p 41.

**§8531. Powers and Duties of Referees.** §1. A referee is a person appointed by the court or a judicial officer, with power—

1. To try an issue of law or of fact in a civil action, or proceeding, and report thereon.

2. To ascertain any other fact in a civil action or proceeding, when necessary for the information of the court, and report the fact, or to take and report the evidence in an action.

3. To execute an order, judgment, or decree, or to exercise any other power or perform any other duty expressly authorized by law.

Law or facts trial by referee, §8477; in §7465.

partition, §8285; lost boundaries, §7412;

supplementary proceedings, §7930; fees,

§7464; costs on continuance of cases,

If referee's report set aside and case be tried before the court and evidence before a referee used in trial before the court by



stipulation, the court may admit other evidence. Fairhaven Land Co. v. Jordan 5 W. 729. may be set aside and others made by the court. Pratsch v. Aberdeen Packing Co. 7 W. 346.

Findings of referee in an equity case

**§8532. Reference By Stipulation—Trial of Fact by Jury.** §248.—248. All or any of the issues in the action, whether of fact or law, or both, may be referred upon the written consent of the parties; but either party shall have the right, in an action at law, upon an issue of fact, to demand a trial by jury.

**§8533. Compulsory Reference.** §249.—249. Where the parties do not consent, the court or judge may upon the application of either, direct a reference in all cases formerly cognizable in chancery in which reference might be made,

1. When the trial of an issue of fact shall require the examination of a long account on either side, in which case the referees may be directed to hear and decide the whole issue, or to report upon any specific question of fact involved therein; or

2. When the taking of an account shall be necessary for the information of the court, before judgment upon an issue of law, or for carrying a judgment or order into effect; or

3. When a question of fact other than upon the pleadings shall arise, upon motion or otherwise, in any stage of the action; or

4. When it is necessary for the information of the court in a special proceeding.

Reference in course of trial sustained.  
Hunley v. Ingle 88 W. 446.  
Compulsory reference and denial of jury

in action against manager of manufacturing plant—joinder of legal action, Lindley v. McGlaughlin 57 W. 581.

**§8534. Appointment by Stipulation or Order.** §250.—250. A reference may be ordered to any person or persons not exceeding three, agreed upon by the parties. If the parties do not agree the court or judge may appoint one or more, not exceeding three.

**§8535. Qualifications of Referees By Order.** §251.—251. When the appointment of referees is made by the court or judge, each referee shall be:

1. Qualified as a juror as provided by statute.
2. Competent as juror between the parties.
3. A duly admitted and practicing attorney.

**§8536. Challenge of Referees.** §252.—252. When the referees are chosen by the court, each party shall have the same right of challenge as to such referees, which shall be made and determined in the same manner and with like effect as in the formation of juries, except that neither party shall be entitled to a peremptory challenge.

**§8537. Powers of Referees and Order of Trial.** §253.—253. Subject to the limitations and directions prescribed in the order of reference, the trial by referees shall be conducted in the same manner as a trial by the court. They shall have the same power to grant adjournments, administer oaths, preserve order, punish all violations thereof upon such trial, compel the attendance of witnesses, and to punish them for non-attendance or refusal to be sworn or testify, as is possessed by the court.

**§8538. Reports of Referees—Judgment—Costs.** §254.—254. The report of the referees shall state the facts found, and when the order of reference includes an issue of law, it shall state the conclusions of law separately from the facts. The referees shall file with their report the evidence received upon the trial. If evidence offered by either party shall not be admitted on the trial and the party offering the same except to the decision, rejecting such evidence at the time, the exceptions shall be noted by the referees and they shall take and receive such testimony and file it with the report. Whatever judgment the court may give upon the report, it shall, when it appears that such evidence was frivolous and inadmissible, require the party at whose instance it was taken and reported, to pay all costs and disbursements thereby incurred.

Costs must be advanced referee to secure report of all the evidence, *Hopkins v. Craib* 101 W. 309.

Referee's longhand notes though not a statement of facts will not be stricken on appeal, *Bash v. Culver Gold Mining Co.* 7 W. 122.

In the absence of evidence the Supreme

Court on appeal will assume that the facts found by the referee are true, *Ferry v. King County* 3 W. 337.

Referee should state facts in detail—counterclaim, *Park v. Mighell* 3 W. 737.

May make supplemental report, *Wheeler & Co. v. Ralph*, 4 W. 617.

**§8539. Filing of Report—Motions.** §255.—255. The report shall be filed with the clerk. If it be filed in term time, either party may, within such time as may be prescribed by the rules of the court, or by special order, move to set the same aside or for judgment thereon, or such order or proceeding as the nature of the case may require. If the report be filed in vacation the like proceedings may be had at the next term following.

**§8540. Power of Court Over Report—Judgment.** §256.—256. The court may affirm or set aside the report, either in whole or in part. If it affirms the report it shall give judgment accordingly. If the report be set aside, either in whole or in part, the court may make another order of reference as to all or so much of the report as is set aside, to the original referees or others, or it may find the facts and determine the law itself and give judgment accordingly. Upon a motion to set aside a report, the conclusions thereof shall be deemed and considered as the verdict of the jury.

Findings by referee in equity case may W. 729.

be set aside by court, *Pratch v. Aberdeen P. Co.*, 7 W. 346; *Horr v. Aberdeen P. Co.*, 7 W. 354; *Fairhaven L. Co. v. Jordan*, 5

Appellate court assumes, in absence of evidence, that facts found by referee are true, *Ferry v. King County*, 2 W. 337.

## TRIALS—VENUE.

Forcible entry and detainer cases §7973.

Forfeiture cases §8251.

Mortgage foreclosure §8201.

Ne exeat cases §8223.

**§8541. Actions for Realty or Specific Personalty Not Transitory.** 47.—47. Actions for the following causes shall be commenced in the county or district in which the subject of the action, or some part thereof is situated;

1. For the recovery of, for the possession of, for the partition of, for the foreclosure of a mortgage on, or for the determination of all questions affecting the title, or for any injuries to real property.

2. All questions involving the rights to the possession or title to any specific article of personal property, in which last mentioned class of cases damages may also be awarded for the detention, and for injury to such personal property.

All actions, generally §8541.

Change of venue §8545; prejudice of judge §8546.

Certain business may be transacted outside county, §8643.

Venue of realty actions, §8632.

Venue of action to foreclose chattel lien, property removed and notice filed in county other than original situs, *Barbour v. Hodge* 99 W. 578.

No jurisdiction if attachment in county other than situation of land, *Wright v. Ankeny* 217 Fed. 988.

Actions to reform deed is transitory, *Rosenbaum v. Evans*, 63 W. 506.

Does not apply in divorce actions, *Cotton v. Cotton*, 69 W. 130.

Trust in real and personal property, action is transitory, *State ex rel. Scougale v. Superior Court* 55 W. 328.

Rescission of contract for removal of timber is local, *Seymour v. La Furgey* 47 W. 450.

One defendant consenting to wrong county cannot confer jurisdiction as to other defendant corporation, *Whitman County v. U. S. Fid. etc. Co.* 49 W. 150.

Action for enforcement of a trust though realty involved is transitory, *State ex rel.*

*Campbell v. Superior Court* 7 W. 306.

Actions to foreclose loggers' liens are properly brought in the county where the logs were cut and lien notice filed though logs are in another county, *Overbeck v. Calligan* 6 W. 342.

Suit to enjoin a city from applying its sewerage fund improperly in a local action—municipal corporations are subject to actions only in the county where situated, *North Yakima v. Superior Court* 4 W. 655.

Action on a promissory note and foreclosure on pledge of promissory notes and certificate of corporate stock is transitory, *State ex rel. Meeker v. Superior Court* 13 W. 607.

An action to recover unpaid purchase money upon a conveyance of real estate is transitory—vendors' lien is not recognized in this State, *Smith v. Allen* 18 W. 1.

Claim by third party to property levied on under execution is properly made where where the property is seized, *State ex rel. Peterson v. Superior Court* 5 W. 639.

Venue is jurisdictional in action to recover specific personal property, and the complaint must show the situs of the property, *Stiles v. James* 2 W. T. 194.

An action for the specific performance of a contract to convey land is transitory.



**Morgan v. Bell** 3 W. 554.

In an action involving the title to land the title to lands in another county may incidentally be inquired into, **Carkeek v. Boston Natl. Bank** 16 W. 399.

Mortgage on land in two counties may be foreclosed in either, **Commercial Natl. Bank v. Johnson** 16 W. 536.

Local actions must be tried with proper venue though defendant does not move for change—district, **McLeod v. Ellis** 2 W. 117.

Action for specific performance to have conveyances set aside and partition or return of money with lien is local action, **State ex rel. Collins v. Superior Court** 13

W. 187.

Under act '77 action must be brought where subject lies, **Wood v. Mastick** 2 W. T. 64.

In cases involving principles of equity court has jurisdiction beyond limits even of the State, **Lindsley v. Mining Co.** 26 W. 301.

Both plaintiff and defendant non-residents may submit to jurisdiction in Federal Court in action for recovery of land, **Hatch v. Ferguson** 57 Fed. Rep. 966; affirmed (C. C. A.) 69 id. 43.

Action for rent is transitory, **Sheppard v. Coeur d'Alene Lum. Co.**, 62 W. 12.

**§8542. Actions for Penalty or Against Public Officer is not Transitory.** §48.—48. Actions for the following causes shall be tried in the district or county where the cause, or some part thereof, arose:

1. For the recovery of a penalty, or forfeiture imposed by statute.
2. Against a public officer, or person specially appointed to execute his duties, for an act done by him in virtue of his office, or against a person who, by his command or in his aid, shall do anything touching the duties of such officer.

**§8543. Action Against Corporation.** §49. An action against a corporation may be brought in any county where the corporation transacts business or transacted business at the time the cause of action arose: or in any county where the corporation has an office for the transaction of business, or any person resides upon whom process may be served against such corporation, unless otherwise provided in this code. L. '09 69.

Corporation having contract, making collections, etc., is not "transacting business," **State ex rel. Seattle & Lake W. W. Co. v. Superior Court** 86 W. 657.

Court has no jurisdiction if action is brought in wrong county—default after motion for change of venue is error, **Richman v. Wenaha Co.** 74 W. 370. business, **Strandall v. Alaska Lum. Co.**, 73 W. 67.

Admission of place of business in answer conclusive though service was in another county, **Collins v. Hazel Lumber Co.** 54 W. 524.

Does not apply to foreign beneficiary society, **Campbell v. Order of Washington** 53 W. 398.

Does not apply to fraternal societies,

**Butler v. Foresters** 48 W. 147.

Service on a purser on a steamboat regularly landing is good, **Sievers v. The Dalles Etc. Navigation Co.** 24 W. 302.

The above section applies to original actions and does not relate to garnishment, **Title Guarantee Etc. Co. v. Seattle Theatre Co.** 23 W. 517.

Venue of corporation is jurisdictional and action cannot be tried in any county other than that provided by law, **McMaster v. Thresher Co.** 10 W. 147.

Office or agent in county need not be affirmatively alleged, **Peterson v. Pantheon Lumber Co.** 62 W. 189.

Citizen of another state may sue foreign corporation having property in this state, **Hunter v. Wenatchee Land Co.** 36 W. 541.

**§8544. All Other Actions Must Be Tried Where Defendant Resides or is**

**Served With Process—Practice.** §50. In all other cases the action must be tried in the country [county] in which the defendants, or some of them, reside at the time of the commencement of the action, or may be served with process, subject, however, to the power of the court to change the place of trial, as provided in sections one hundred and sixty-two [§8545] and one hundred and sixty-three [8548] of this code. If the county in which the action is commenced is not the proper county for the trial thereof, the action may, notwithstanding, be tried therein, unless the defendant, at the time he appears and demurs or answers, files an affidavit of merits, and demands that the trial be had in the proper county. L. '91 71.

Venue of realty actions, §8541.

Prohibition will lie to prevent trial after denial of change of venue, **State ex Martin v. Court** 97 W. 358.

One of three defendants entitled to change of venue the other defendants made parties to retain jurisdiction, **State ex Keyes v. Court** 103 W. 402.

Appearance and affidavit of merits will secure change, **State ex Poussier v. Court** 98 W. 565.

Newcomer cannot change venue by

claiming residence in another county, **Carr v. Remele** 74 W. 380.

Garnishee may change venue if no trial in principal action, **State ex Stewart & H. Co. v. Court**, 67 W. 321.

Objection to jurisdiction after refusal to change venue waived by general appearance **Seaton v. Cook** 45 W. 27.

Prohibition will not lie to compel change of venue, **State ex rel. La Furgey v. Superior Court** 47 W. 154.

Venue may be stipulated—certiorari

lies, State ex rel. Schwabacher v. Superior Court 61 W. 681.

Defendant is not entitled to have an action of divorce removed, Pfueller v. Superior Court 14 W. 115.

The defendant must apply for change of venue "at the time he appears and demurs or answers," Rector v. Thompson 26 W. 400.

The defendant after having made proper application for change does not waive his right by failing to appear at the time a ruling is had upon his application, State ex rel. Stockman v. Superior Court 15 W. 366.

**§8545. Motion for Change of Venue.** §51.—51. The court may on motion in the following cases change the place of trial, when it appears by affidavit, or other satisfactory proof:

1. That the county designated in the complaint is not the proper county, or

2. That there is reason to believe that an impartial trial cannot be had therein, or

3. That the convenience of witnesses or the ends of justice would be forwarded by the change, or

4. That from any cause the judge is disqualified; which disqualification exists in either of the following cases: In an action or proceeding to which he is a party, or in which he is interested; when he is related to either party by consanguinity or affinity within the third degree; when he has been of counsel for either party in the action or proceeding.

Affidavit for change to defendant's residence traversed and residence shown where venue laid, Agens v. Powell 79 W. 131.

Venue of action to rescind trade of land in two counties may be changed from one to the other, Wilson v. Mills 91 W. 71.

Motion for judge outside county denied where no showing other judge in county would be witness, State v. Sefrit 82 W. 520.

Judge's law firm formerly represented party in other matters, held did not disqualify judge, Fortson Shingle Co. v. Skagland 77 W. 8.

Convenience of witnesses ground for refusal of change of venue, Culbertson v. Gilbert Hunt Co. 79 W. 446.

Venue of local action may be changed, State ex rel. Howell v. Superior Court 82 W. 356.

Convenience of witnesses outside state not ground for change, State ex rel. Nash v. Superior Court 82 W. 614.

Upon application for a change of venue plaintiff may controvert the defendant's allegation as to residence, Critler v. Jacobson & Lindstrom, 66 W. 322.

Change of venue in criminal cases, §9397.

Mandamus is remedy in wrong change of venue—trust in real property action

**AN ACT** relating to the disqualification of judges of the superior courts, and providing change of venue or change of judges on account thereof. Approved March 18, 1911. Laws '11 p 617.

**§8546. Prejudice of Judge.** §1. No judge of a superior court of the State of Washington shall sit to hear or try any action or proceeding when it shall be established as hereinafter provided, that such judge is prejudiced against any party or attorney, or the interest of any party or attorney appearing in such cause. In such case the presiding judge shall forthwith transfer the action to another department of the same court or call in a judge from some other court, or apply to the governor to send a judge, to try the case; or, if the convenience of witnesses or the ends of justice will not be interfered with by such course, and the action is of such a character that a change of

Where suit is commenced and the defendant served in one county, the defendant may have venue changed to county of his residence, Kennedy v. Derrickson 5 W. 289.

Upon affidavit of merits and demand for bill of particulars defendant entitled to change of venue, State ex rel. Cummings v. Superior Court 5 W. 518; North Yakima v. Sup. Ct 4 W. 655; Campbell v. Sup. Ct. 7 W. 306; Allen v. Sup. Ct. 9 W. 668; overruled in State ex rel. Miller v. Sup. Ct. 40 W. 555.

Action for purchase price of real estate transitory, Smith v. Allen 18 W. 1.

transitory, State ex rel. Scougale v. Superior Court 55 W. 328.

Affirmed, English v. Gibbons 79 W. 210.

Prohibition will not lie to prevent proceedings though court without jurisdiction, State ex rel. Miller v. Superior Court 40 W. 555.

Change by stipulation in divorce case—change of judicial district—new parties, Kane v. Kane 35 W. 517.

Where action is of double character change properly denied—convenience of witnesses is in discretion of the court, State ex rel. Port Blakely Mill Co. v. Superior Court 9 W. 673.

Change should have been granted on affidavit of advice of counsel of valid defense—joinder of defendants in motion for change—failure to appear for motion will not defeat it, State ex rel. Allen v. Superior Court 9 W. 668.

Judge disqualified under subd. 4, may grant change of venue, State v. Sachs 3 W. 691.

Judge disqualified if he has prejudged case, State ex rel. Barnard v. Board 19 W. 8; but interest of county does not disqualify county commissioners, O'Connell v. Baker 35 W. 376.



venue thereof may be ordered, he may send the case for trial to the most convenient court.

Disqualification of judges §8566.

Change for prejudice of judge in criminal case §9398.

After request for jury trial affidavit of prejudice is too late, *State ex Farmer v. Bell* 101 W. 133.

In confirmation of mortgage foreclosure, judge may be changed—time, *State ex Talens v. Holden* 96 W. 35.

Motion to modify decree of divorce one year after judgment entitled change of judge, *State ex Foster v. Court* 95 W. 647.

Venue may be changed to another county if convenience of witnesses not interfered with, *State ex Swan v. Court* 95 W. 510.

"Forthwith" construed—power to call second judge—venue cannot be changed after another judge called, *State ex Giles v. French* 102 W. 273.

Court loses jurisdiction when motion made, *State ex rel. Hannebohl v. Superior Court* 85 W. 663.

Error in change of judge immaterial if trial de novo in supreme court, *Ingersoll v. Gourley* 78 W. 406.

Change of judge may be had in petition to vacate judgment, *Cooper v. Cooper* 83 W. 85.

Creditor in receivership not a "party" competent to file affidavit—motion too late after receiver appointed—affidavit in collateral proceeding does not disqualify judge, *State ex rel. Nixon v. Superior Court* 87 W. 603.

After motion for bill of particulars and for default, motion for change of judge too late, *Nance v. Woods* 79 W. 188.

After motion by state, judge cannot change the venue at the instance of accused, *State ex rel. O'Phelan v. Superior Court* 88 W. 669.

Accused refusing change of judge, venue cannot be changed, *State ex rel. Howard v. Superior Court* 88 W. 344.

Change of judge denied in ancillary contempt proceeding, *State ex rel. Gourley v. Smith* 78 W. 292.

Motion filed, before ruling change of

**§8547. Motion—Affidavit.** §2. Any party to or any attorney appearing in any action or proceeding in a superior court, may establish such prejudice by motion supported by affidavit that the judge before whom the action is pending is prejudiced against such party or attorney; so that such party or attorney cannot, or believes that he cannot, have a fair and impartial trial before such judge. Provided, further, That no party or attorney shall be permitted to make more than one application in any action or proceeding under this act.

**§8548. Where Cause Shall Be Sent—But One Change.** §52.—52. If the motion for a change of the place of trial be allowed, the change shall be made to the county or district where the action ought to have been commenced, if it be for the cause mentioned in subdivision one of section fifty-one, and in other cases to the most convenient county where the cause alleged does not exist. Nither party shall be entitled to more than one change of the place of trial, except for causes not in existence when the first change was allowed.

Garnishee may have change of venue, *State ex rel. Wyman etc. Co. v. Superior Court* 40 W. 442.

**§8549. New County, Change Shall Be Made When.** §53. Any party in a civil action pending in the superior court in a county out of whose limits a new county, in whole or in part, has been created, may file with the clerk of such superior court an affidavit setting forth that he is a resident of such newly created county, and that the venue of such action is transitory, or that the

judges may be had—too late after adverse ruling, *State ex rel. Deavers v. French* 78 W. 260.

Change a matter of right—applies to constructive contempt, *State ex rel. Russell v. Superior Court* 77 W. 631.

After hearing in show cause order in injunction too late to change judge, *Fortson Shingle Co. v. Skagland* 77 W. 8; *State ex rel. Stevens v. Superior Court* 82 W. 420.

Rule requiring application to be made before it is known which of several judges will try case is contrary to statute, *State ex rel. Beeler v. Smith* 76 W. 460.

One change prohibition will not lie for second change for prejudice of judge, *State ex Moore v. Court*, 70 W. 362.

Application for change of venue is timely if made on the first appearance of applicant in the proceedings, *Bedolfe v. Bedolfe* 71 W. 60.

Motion is timely where accused was not represented by counsel when the cause was set for trial, and counsel made the motion at their first appearance, *State ex rel. Jones v. Gay*, 65 W. 629.

Application too late where the party submits himself to the jurisdiction of the court, and first sought a continuance only for the convenience of counsel, *State ex rel. Lefebvre v. Clifford*, 65 W. 313.

Affirmed, *State ex rel. Stevens v. Superior Court* 82 W. 420.

Affidavit must be brought to notice of court; shall not delay progress of litigation, *State ex Nelson v. Yakey*, 64 W. 511.

Judge can only deny the application on the ground that it was not timely, *Garvey v. Skamser*, 69 W. 259.

The court to which a case is sent on change of venue acquires full jurisdiction, subject to statutory remedies for change of venue, *State ex rel. Moore v. Court*, 70 W. 362.

After a petition to vacate a judgment has been transferred the judge has no jurisdiction to hear the petition on its merits, *Garvey v. Skamser*, 69 W. 259.

venue of such action is local, and that it ought properly to be tried in such newly created county; and thereupon the clerk shall make out a transcript of the proceedings already had in such action in such superior court, and certify it under the seal of the court, and transmit such transcript, together with the papers on file in his office connected with such action, to the clerk of the superior court of such newly created county, wherein it shall be proceeded with as in other cases. L. '91 71.

**§8550. Duties of Clerk—Costs Paid by Whom—Status of Cause.** §54.—54. When an order is made transferring an action or proceeding for trial, the clerk of the court must transmit the pleadings and papers therein to the court to which it is transferred. The costs and fees thereof and of filing the papers anew must be paid by the party at whose instance the order was made, except in the cases mentioned in subdivision one, section fifty-one, in which case the plaintiff shall pay costs of transfer. The court to which an action or proceeding is transferred, has and exercises over the same, the like jurisdiction as if it had been originally commenced therein.

Local action changed, court has full power, State ex rel. Howell v. Superior Court 82 W. 356. After change of venue in a criminal case information may be amended, State v. Lyts 25 W. 347.

**§8551. Change of Venue by Stipulation.** §55.—55. Notwithstanding the provisions of sections fifty-one [§8545] all the parties to the action, by stipulation in writing, or by consent in open court, entered in the records, may agree that the place of trial be changed to any county or district in the state, and thereupon the court must order the change agreed upon.

Venue may be stipulated—certiorari lies, Schwabacher & Co. v. Superior Court 61 W. 681.

**§8552. Party Securing Change Must Not Delay It.** §56.—56. If such papers be not transmitted to the clerk of the proper court, within the time prescribed in the order allowing the change, and the delay be caused by the act or omission of the party procuring the change, the adverse party, on motion to the court or judge thereof, may have the order vacated, and thereafter no other change of the place of trial shall be allowed to such party.

**§8553. When Change of Venue Complete—Status of Action.** §57.—57. Upon the filing of the papers with the clerk of the court to which the cause is transferred, the change of venue shall be deemed complete, and thereafter the action shall proceed as though it had been commenced in that court.

**§8554. All Record Entries to Follow Change.** §58.—58. The clerk of the court must also transmit with the original papers, where an order is made changing the place of trial, a certified transcript of all record entries, up to and including the order for such change.

## WASTE AND TRESPASS.

Criminal trespass §8988.

Redemption in mortgage foreclosure §7916.

**§8555. Remedy for Waste.** §600.—600. Wrongs heretofore remediable by action of waste shall be subjects of actions as other wrongs.

Criminal trespass, §8984.

W. 447

Action is in tort—verdict properly directed for plaintiff—special findings, Northern Pack Co. v. Myers-Parr Mill Co. 54

Injunction will not lie for a mere trespass, Kennedy v. Elliott 85 Fed. Rep. 832.

**§8556. Damage and Forfeiture for Waste.** §601.—601. If a guardian, tenant in severalty, or in common, for life or for years, of real property, commit waste thereon, any person injured thereby may maintain an action at law for damages therefor against such guardian or tenant; in which action there may be judgment for treble damages, forfeiture of the estate of the party committing or permitting the waste and of eviction from the property. But judgment of forfeiture and eviction shall only be given in favor of the person entitled to the reversion against the tenant in possession, when the injury to the estate in reversion is determined in the action to be equal to the value of the tenant's estate or unexpired term or to have been done or suffered in malice.



Deposit of sand and gravel on city lot is not waste though injury for agricultural purposes, *Moore v. Twin City Ice & C. S. Co.* 92 W. 608.

Prior to statute remainderman allowed action only by equitable grace, *McDowell v. Beckham*, 72 W.

**§8557. Treble Damages for Trespass.** §602.—602. Whenever any person shall cut down, girdle or otherwise injure, or carry off any tree, timber or shrub on the land of another person, or on the street or highway, in front of any person's house, village, town or city lot, or cultivated grounds or on the commons of [or] public grounds of any village, town or city, or on the street or highway in front thereof, without lawful authority in an action by such person, village, town, or city, against the person committing such trespasses or any of them, if judgment be given for the plaintiff, it shall be given for treble the amount of damages claimed or assessed therefor, as the case may be.

Employees cutting contrary to instructions of foreman is "casual or involuntary"—pleading, *Luednghaus v. Pederson* 100 W. 580.

Redemptioner can recover only actual damage for waste, *Cogswell v. Brown* 102 W. 625.

Treble damages not penal and intent not material, *Harold v. Toomey* 92 W. 297.

Electric company authorized trimmed trees, a menace to wires, excessively, held it did incur treble damages, *Tronsrud v. Puget Sound Tr., L. & P. Co.* 91 W. 660.

Trial amendment bringing in plaintiff's parents allowed, *Townsend v. Three Lakes Lum. Co.*, 67 W. 654.

Removal of timber after cutting may not be evidence of willfulness, *Rogers v. Kangley Timber Co.* 74 W. 48.

The measure of damage is treble the value of the standing timber, *Bailey v. Hayden*, 63 W. 57.

Has no application where the owner of the fee removed timber that had been reserved from the grant, since the statute is penal and must be strictly construed, *Skamania Boom Co. v. Youmans*, 64 W. 94. 81 §1551.

Treble damages allowed only for cutting timber where other causes united—how

timber cut, *Lytle Logging Co. v. Hump-tulips Driv. Co.* 60 W. 559.

Abutting owner may recover treble damages for trees cut in street, *Simons v. Wilson* 61 W. 574.

Defendant showed a contract, plaintiff having sued for tort, could recover nothing, *Tacoma Mill Co. v. Perry* 40 W. 44.

Action treated as one in conversion to cure objection of venue, *McLeod v. Ellis* 2 W. 117.

Jury should find single damages and the court assess treble damages, *id.*

In action for conversion the question is the wrongful taking and not mala fides—measure of damages, *Chappell v. Puget Sound etc. Co.* 27 W. 63.

Instruction to jury sustained—statute is penal in nature and intent must be shown, *Gardner v. Lovegren* 27 W. 356.

Equity will not interfere with trespass or threatened trespass, *Meeker v. Gilbert* 3 W. T. 369.

Trespases should be specifically alleged in action to enjoin, *Wilkeson Co. v. Driver*, 9 W. 177.

Parol proof of undisputed possession is sufficient show of title, *Spurlock v. Pt. Townsend, etc., Ry.*, 13 W. 29.

**§8558. When Single Damages.** §603.—603. If upon trial of such action, it shall appear that the trespass was casual or involuntary, or that the defendant had probable cause to believe that the land on which such trespass was committed was his own, or that of the person in whose service or by whose direction the act was done or that such tree or timber was taken from uninclosed woodlands, for the purpose of repairing any public highway or bridge upon the land or adjoining it judgment shall only be given for single damages.

Trespass not involuntary where trees cut without having tried to locate section lines, *Nethery v. Nelson*, 51 W. 624.

Not involuntary where trees cut after

running line on magnetic variation called for in field notes, *Heybrook v. Index Lum. Co.*, 49 W. 378.

**§8559. Injunction by Claimant to Lands of the United States.** §604.—604. When any two or more persons are opposing claimants under the laws of the United States to any land in this state, and one is threatening to commit upon such land waste which tends materially to lessen the value of the inheritance and which cannot be compensated by damages and there is imminent danger that unless restrained such waste will be committed, the party on filing this [his] complaint and satisfying the court or judge of the existence of the facts, may have an injunction to restrain the adverse party. In all cases he shall give notice and bond as is provided in other cases where injunction is granted, and the injunction when granted shall be set aside or modified as is provided generally for injunction and restraining orders.

Injunction against removal of timber, *Arment v. Hensel* 5 W. 152.

The state is not a "person" and injunc-

tion will not lie, *McBride v. Commissioners of Pierce County* 44 Fed. Rep. 17.

# COURTS

## ALL COURTS.

### ALL COURTS—GENERAL PROVISIONS, §8560.

#### CLERKS §8578.

Coroners shall turn over cases §1745.

#### COURT COMMISSIONERS §8590.

Courts-martial §3765-62.

Epidemic endangering health, courts may

adjourn §5359.

Holidays §2699.

Juvenile court and procedure §593.

REPORTERS §8595.

SUPERIOR COURTS §8608.

Jail regulations, shall prescribe §3405.

SUPREME COURT §8651.

**AN ACT in relation to magistrates.** Approved February 26, 1891. Laws '91 p 91.

§8560. **Magistrates. §1.** A magistrate is an officer having power to issue a warrant for the arrest of a person charged with the commission of a crime.

Courts have jurisdiction of contesting claims to public lands after interior department has issued patent as in the case of the Northern Pacific contesting claimant with patent, Northern Pacific Ry. Co. v. Spray 27 W. 1.

In a qualified sense district courts of Territory were United States courts, Smith v. United States 1 W. T. 262; Nichols v. Griffin 1 W. T. 374. Were bound by rules in equity of supreme court of the United States, Stevens v. Baker 1 W. T. 316.

The decisions of administrative department as in U. S. land cases become res judicata, Galliber v. Cadwell 3 W 501.

Territorial courts had jurisdiction of offenses on Puget Sound, Smith v. United States 1 W. T. 262.

Concurrent jurisdiction of the federal courts may be invoked after state court has taken jurisdiction of the same parties and cause of action, O'Callaghan v. O'Brien 116 Fed. Rep. 934.

§8561. **All Judges Are Magistrates. §2.** The following persons are magistrates: 1. The justices of the supreme court. 2. The superior judges and justices of the peace. 3. All municipal officers authorized to exercise the powers and perform the duties of a justice of the peace.

**AN ACT requiring judges of the supreme court and superior courts to wear gowns while sitting in the hearing of causes.** Approved March 18, 1909. Laws '09 p 716.

§8563. **Gowns to Be Worn. §1.** That each of the judges of the supreme court and the judges of the superior courts shall in open court during the presentation of causes, before them, appear in and wear gowns, made of black silk, of the usual style of judicial gowns.

**AN ACT in relation to the powers of courts and judicial officers.** Approved February 26, 1891. Laws '91 p 91.

§8564. **Powers of Courts. §1.** Every court of justice has power:

1. To preserve and enforce order in its immediate presence.
2. To enforce order in the proceedings before it, or before a person or body empowered to conduct a judicial investigation under its authority.
3. To provide for the orderly conduct of proceedings before it or its officers.
4. To compel obedience to its judgments, decrees, orders, and process, and to the orders of a judge out of court, in an action, suit, or proceeding pending therein.
5. To control, in furtherance of justice, the conduct of its ministerial officers, and of all other persons in any manner connected with a judicial proceeding before it, in every matter appertaining thereto.
6. To compel the attendance of persons to testify in an action, suit, or proceeding therein, in the cases and manner provided by this code.



7. To administer oaths in an action, suit or proceeding pending therein, and in all other cases where it may be necessary in the exercise of its powers or the performance of its duties.

Power to provide juries, *Cathey v. Seattle Electric Co.* 58 W. 176.

Cited 92 W. 219.

§8565. **Contempt to Enforce.** §2. For the effectual exercise of the powers specified in the last section, the court may punish for contempt in the cases and the manner provided by law.

Contempts generally §7442.

§8566. **When Judge Disqualified.** §3. A judicial officer is a person authorized to act as a judge in a court of justice. Such officer shall not act as such in a court of which he is a member in any of the following cases:

1st. In an action, suit or proceeding to which he is a party, or in which he is directly interested.

2nd. When he was not present and sitting as a member of the court at the hearing of a matter submitted for its decision.

3rd. When he is related to either party by consanguinity or affinity within the third degree. The degree shall be ascertained and computed by ascending from the judge to the common ancestor, and descending to the party, counting a degree for each person in both lines, including the judge and party and excluding the common ancestor.

4th. When he has been attorney in the action suit or proceeding in question for either party; but this section does not apply to an application to change the place of trial, or the regulation of the order of business in court. In the cases specified in subdivisions 3 and 4, the disqualification may be waived by the parties, and except in the supreme court shall be deemed to be waived unless an application for a change of the place of trial be made as provided by law. L. '95 63.

Prejudice of judge disqualifies §8548.

Judge may sign judgment ordered by predecessor, *Hazard v. McAndrews* 18 W. 392.

When judge is interested though not directly his refusal of change of venue is an abuse of discretion, *Barnett v. Ashmore* 5 W. 163.

§8567. **When Judge May Act as Attorney.** §4. Any judicial officer may act as an attorney in any action, suit, or proceeding to which he is a party or in which he is directly interested. A justice of the peace, otherwise authorized by law, may act as an attorney in any court other than the one of which he is judge, except in an action, suit, or proceeding removed therefrom to another court for review; but no judicial officer shall act as attorney in any court, except as in this section allowed.

§8568. **Powers of Judge Limited.** §5. A judge may exercise, out of court, all the powers expressly conferred upon a judge as contradistinguished from a court, and not otherwise.

After presenting motion to judge com- chambers, *Melsenheimer v. Melsenheimer* plaint cannot be made that hearing was in 55 W. 32.

§8569. **Powers of Judicial Officers.** §6. Every judicial officer has power:

1. To preserve and enforce order in his immediate presence, and in the proceedings before him, when he is engaged in the performance of a duty, imposed upon him by this code or other statute.

2. To compel obedience to his lawful orders, as provided in this code.

3. To compel the attendance of persons to justify in a proceeding pending before him in the cases and manner provided in this code.

4. To administer oaths to persons, in a proceeding pending before him, and in all other cases where it may be necessary, in the exercise of his powers and the performance of his duties.

§8570. **Contempt to Enforce.** §7. For the effectual exercise of the powers specified in the last preceding section, a judicial officer may punish for contempt, in the cases and manner provided by law.

§8571. **Powers of Judges Supreme and Superior Courts.** §8. The judges of the supreme and superior courts have power in any part of the state to take and certify,

1. The proof and acknowledgment of a conveyance of real property, or any other written instrument authorized or required to be proved or acknowledged.

2. The acknowledgment of satisfaction of a judgment in any court.

3. An affidavit or deposition to be used in any court of justice or other tribunal of this state.

4. To exercise any other power and perform any other duty conferred or imposed upon them by statute.

Judge may settle statement of facts in State ex rel. Malouf v. McDonald 21 W. other county than where case is tried, 201.

**§8572. Powers of Other Judges.** §9. Every other judicial officer may, within the county, city, district, or precinct in which he is chosen,

1. Exercise the powers mentioned in subdivisions 1, 2, and 3 of the last preceding section.

2. Exercise any other power and perform any other duty conferred or imposed upon him by other statute.

**§8573. Power to Adjourn.** §10. A court or judicial officer has power to adjourn any proceeding before it or him, from time to time, as may be necessary, unless otherwise expressly provided by law.

**§8574. Power to Provide Incidentals.** §11. If the proper authority neglects to provide any supreme or superior court with rooms, furniture, fuel, lights, and stationery, suitable and sufficient for the transaction of its business, and for the jury attending upon it, if there be one, the court may order the sheriff to do so, at the place within the county designated by law, for holding such court; and the expense incurred by the sheriff in carrying such order into effect, when ascertained and ordered to be paid by the court, is a charge upon the county.

If court proceeds illegally remedy is not prohibition but injunction against disbursing officers, State ex rel. Stopper v. Hunter 4 W. 712; see 4 W. 30.

Auditor cannot be compelled to draw warrant if commissioners are providing conveniences, Barnett v. Ashmore 5 W. 163.

**§8575. May Provide Procedure.** §12. When jurisdiction is, by the constitution of this state, or by statute, conferred on a court or judicial officer, all the means to carry it into effect are also given; and in the exercise of the jurisdiction, if the course of proceeding be not specifically pointed out by statute, any suitable process or mode of proceeding may be adopted which may appear most conformable to the spirit of this code.

Commissioners may be appointed to sell bonds for irrigation district, State ex rel. Dyer v. Middle Kittitas Irr. Dist. 56 W. 488.

Gilliam 60 W. 420,

Court may provide procedure in primary election contest, State ex rel. McAvoy v.

Court cannot order personal service outside the state in cases not authorized by statute, State ex rel. Hopman v. Superior Court 88 W. 612.

**§8576. Criers and Bailiffs.** §13. Every court of record shall have the power to appoint a crier and as many bailiffs as may be necessary for the orderly and expeditious dispatch of the business.

**AN ACT relating to the salaries of the judges of the supreme and superior courts.** Approved March 4, 1907. Laws '07 p 95.

**§8577. Salary of Judges.** §1. Each judge of the supreme court shall receive an annual salary of seven thousand dollars (\$7,000.00). Each judge

**§8577. Salary of Judges—Class A Counties Construed.** §1. Each judge of the supreme court shall receive an annual salary of seven thousand dollars (\$7,000.00). Each judge of the superior court shall receive an annual salary of four thousand five hundred dollars (\$4,500.00): Provided, That in counties of the first class each judge of the superior court shall receive an annual salary of five thousand dollars (\$5,000.00), and in accordance with and for the purpose of effectuating the legislative intent and object in the enactment of said chapter 77 of the Session Laws of 1919 and also this act, the term "counties of the first class" is hereby understood, interpreted and declared to include class A counties. [Emergency] L. '21 ch. 188 L. '19 ch. 77.



7. To administer oaths in an action, suit or proceeding pending therein, and in all other cases where it may be necessary in the exercise of its powers or the performance of its duties.

Power to provide juries, *Cathey v. Seattle Electric Co.* 58 W. 176.  
Cited 92 W. 219.

**§8565. Contempt to Enforce.** §2. For the effectual exercise of the powers specified in the last section, the court may punish for contempt in the cases and the manner provided by law.

Contempts generally §7442.

**§8566. When Judge Disqualified.** §3. A judicial officer is a person authorized to act as a judge in a court of justice. Such officer shall not act as such in a court of which he is a member in any of the following cases:

1st. In an action, suit or proceeding to which he is a party, or in which he is directly interested.

2nd. When he was not present and sitting as a member of the court at the hearing of a matter submitted for its decision.

3rd. When he is related to either party by consanguinity or affinity within the third degree. The degree shall be ascertained and computed by ascending from the judge to the common ancestor, and descending to the party, counting a degree for each person in both lines, including the judge and party and excluding the common ancestor.

4th. When he has been attorney in the action suit or proceeding in question for either party; but this section does not apply to an application to change the place of trial, or the regulation of the order of business in court. In the cases specified in subdivisions 3 and 4, the disqualification may be waived by the parties, and except in the supreme court shall be deemed to be waived unless an application for a change of the place of trial be made as provided by law. L. '95 63.

Prejudice of judge disqualifies §8548.

Judge may sign judgment ordered by predecessor, *Hazard v. McAndrews* 18 W. 392. When judge is interested though not directly his refusal of change of venue is an abuse of discretion, *Barnett v. Ashmore* 5 W. 163.

**§8567. When Judge May Act as Attorney.** §4. Any judicial officer may act as an attorney in any action, suit, or proceeding to which he is a party or in which he is directly interested. A justice of the peace, otherwise authorized by law, may act as an attorney in any court other than the one of which he is judge, except in an action, suit, or proceeding removed therefrom to another court for review; but no judicial officer shall act as attorney in any court, except as in this section allowed.

**§8568. Powers of Judge Limited.** §5. A judge may exercise, out of court, all the powers expressly conferred upon a judge as contradistinguished from a court, and not otherwise.

After presenting motion to judge com. chambers, *Melsenheimer v. Melsenheimer* plaintiff cannot be made that hearing was in 55 W. 32.

**§8569. Powers of Judicial Officers.** §6. Every judicial officer has power:

1. To preserve and enforce order in his immediate presence, and in the proceedings before him, when he is engaged in the performance of a duty, imposed upon him by this code or other statute.

2. To compel obedience to his lawful orders.

1. The proof and acknowledgment of a conveyance of real property, or any other written instrument authorized or required to be proved or acknowledged.

2. The acknowledgment of satisfaction of a judgment in any court.

3. An affidavit or deposition to be used in any court of justice or other tribunal of this state.

4. To exercise any other power and perform any other duty conferred or imposed upon them by statute.

Judge may settle statement of facts in State ex rel. Malouf v. McDonald 21 W. other county than where case is tried. 201.

**§8572. Powers of Other Judges. §9.** Every other judicial officer may, within the county, city, district, or precinct in which he is chosen,

1. Exercise the powers mentioned in subdivisions 1, 2, and 3 of the last preceding section.

2. Exercise any other power and perform any other duty conferred or imposed upon him by other statute.

**§8573. Power to Adjourn. §10.** A court or judicial officer has power to adjourn any proceeding before it or him, from time to time, as may be necessary, unless otherwise expressly provided by law.

**§8574. Power to Provide Incidentals. §11.** If the proper authority neglects to provide any supreme or superior court with rooms, furniture, fuel, lights, and stationery, suitable and sufficient for the transaction of its business, and for the jury attending upon it, if there be one, the court may order the sheriff to do so, at the place within the county designated by law, for holding such court; and the expense incurred by the sheriff in carrying such order into effect, when ascertained and ordered to be paid by the court, is a charge upon the county.

If court proceeds illegally remedy is not prohibition but injunction against disturbing officers, State ex rel. Stopper v. Hunter 4 W. 712; see 4 W. 30.

Auditor cannot be compelled to draw warrant if commissioners are providing conveniences, Barnett v. Ashmore 5 W. 163.

**§8575. May Provide Procedure. §12.** When jurisdiction is, by the constitution of this state, or by statute, conferred on a court or judicial officer, all the means to carry it into effect are also given; and in the exercise of the jurisdiction, if the course of proceeding be not specifically pointed out by statute, any suitable process or mode of proceeding may be adopted which may appear most conformable to the spirit of this code.

Commissioners may be appointed to sell bonds for irrigation district, State ex rel. Dyer v. Middle Kittitas Irr. Dist. 56 W. 488.

Court may provide procedure in primary election contest, State ex rel. McAvoy v.

Gilliam 60 W. 420,

Court cannot order personal service outside the state in cases not authorized by statute, State ex rel. Hopman v. Superior Court 88 W. 612.

**§8576. Criers and Bailiffs. §13.** Every court of record shall have the power to appoint a crier and as many bailiffs as may be necessary for the orderly and expeditious dispatch of the business.

**AN ACT relating to the salaries of the judges of the supreme and superior courts.** Approved March 4, 1907. Laws '07 p 95.

**§8577. Salary of Judges. §1.** Each judge of the supreme court shall receive an annual salary of seven thousand dollars (\$7,000.00). Each judge of the superior court shall receive an annual salary of four thousand five hundred dollars (\$4,500.00): Provided, that in counties of the first class each judge of the superior court shall receive an annual salary of five thousand dollars (\$5,000.00). 1907 ch 77.

Superior judges paid monthly—by more than one county §8649. state officers, counties may be authorized to raise salaries, In re Salary, etc. 82 W. 623.

Superior judges are dual county and



## CLERKS.

## CLERKS OF COURTS OF RECORD.

**AN ACT** in regard to clerk of the supreme and district courts, and prescribing certain duties for such clerk. Approved December 6, 1881. C81 §2174-85.

**§8578. Oath and Bond. §2175.—2.** Before entering upon the duties of his office, he shall take an oath of office and give bond in such a sum, with surety and condition, as the said court or judges thereof shall require, which bond shall be deposited with the secretary of state. The bond shall be to the state of Washington and any party aggrieved by the official acts or omissions of said clerk may have his action thereon.

County clerk's bond later act §8578.

**§8579. Office—Records. §2176.—3.** The clerk shall keep his office at the seat of government, and shall keep it open at all reasonable hours, and shall keep such records and books as are prescribed by law and the supreme court.

**§8580. County Clerk's Records. §2179.—6.** He shall at the expense of the county, provide and keep a book, in which he shall enter all appearances, and the time of filing all pleadings in any cause pending in said court.

He shall also keep a docket, in which he shall enter, before every term, the title of all causes pending before said court at such term, in the order in which they were commenced, beginning with criminal cases, noting in separate columns the names of the attorneys—the character of the action—the pleadings upon which it stands at the commencement of the term, leaving a margin opposite each case for the court to enter a short minute of the orders of the term. One copy of this docket he shall furnish for the use of the court, and another for the use of the members of the bar.

He shall also provide and keep at each term, a minute book, in which he shall enter the name of witnesses and jurors, with time of attendance, distance of travel and whatever else is necessary to enable him to make out a complete cost bill.

He shall also provide and keep a well bound book, to be called the order book or journal, in which he shall record the daily proceedings of the court and enter all verdicts, orders, judgments and decisions thereof, from which every morning shall be read in open court. the proceedings of the previous day, which shall be signed by the judge; but the court shall have full control of all entries in said journal at any time during the same term in which they were made.

He shall also provide and keep well bound books, one for an execution docket, one for a book of levies, and one for a final record, in which he shall make a full and perfect record, of all criminal cases in which a final judgment is rendered, and all civil cases in which by any order or final judgment the title to real estate, or any interest therein, is in any way affected, and such other final judgments, orders or decisions as either party may require, and may pay him for recording.

He shall also provide and keep such other books, as are prescribed by law, and required in the discharge of the duties of his office.

Judgment is entered when filed, *Quarles v. Seattle* 26 W. 226.

**§8581. Filing of Papers. §2180.—7.** He shall file all papers that may be legally lodged with him for that purpose, noting the day, month and year, when so filed.

**§8582. Custody of Records—Delivery to Successor. §2181.—8.** He shall be responsible for the safe custody and delivery to his successor of all books and papers belonging to his office.

**'AN ACT** in relation to the powers and duties of clerks of courts. Approved February 26, 1891. Laws '91 p 98.

**§8583. Where Office of County Clerk Kept.** §1. The office of the clerk of the superior court shall be kept at the county seat of the county of which he is clerk.

**§8584. Office Hours.** §2. Each clerk of a superior court shall keep his office open for the transaction of business on every judicial day, from eight to twelve in the forenoon, and from one to five in the afternoon.

**§8585. Powers and Duties of Clerks.** §3. The clerk of the supreme court and each clerk of a superior court has power to take and certify the proof and acknowledgment of a conveyance of real property or any other written instrument, authorized or required to be proved or acknowledged, and to administer oaths in every case when authorized by law: and it is the duty of the clerk of the supreme court, and of each county clerk for each of the courts for which he is clerk,

1. To keep the seal of the court, and affix it in all cases where he is required by law.

2. To record the proceedings of the court.

3. To keep the records, files, and other books and papers appertaining to the court.

4. To file all papers delivered to him for that purpose, in any action or proceeding in the court.

5. To attend the court of which he is clerk, to administer oaths and receive the verdict of a jury in any action or proceeding therein, in the presence and under the direction of the court.

6. To keep the journal of the proceedings of the court, and, under the direction of the court, to enter its orders, judgments, and decrees.

7. To authenticate, by certificate or transcript, as may be required, the records, files, or proceedings of the court, or any other paper appertaining thereto, and filed with him.

8. To exercise the powers and perform the duties conferred and imposed upon him elsewhere by statute.

9. In the performance of his duties, to conform to the direction of the court.

Entry of verdict is not entry of judgment and judgment no obstante proper procedure, *Mattson v. Griffin Transfer Co.* 90 W. 1.

Time for appeal runs from motion for new trial denied and entry by clerk, *Woody v. Seattle Electric Co.* 65 W. 539.

**§8586. Deputies.** §4. The clerk of the supreme court, and each clerk of a superior court, may have one or more deputies, to be appointed by such clerk in writing, and to continue during his pleasure. Such deputies have the power to perform any act or duty relating to the clerk's office that their respective principals have, and their principals are responsible for their conduct.

**§8587. Clerk Can Not Be Partner of an Attorney.** §5. Each clerk of a court is prohibited during his continuance in office from acting, or having a partner who acts, as an attorney of the court of which he is clerk.

**AN ACT** fixing the salary of the clerk of the supreme court and providing for the payment of the same and declaring an emergency. Approved February 28, 1890. Laws '90 p 330.

**§8588. Salary of Clerk Supreme Court.** §1. That the clerk of the supreme court shall receive an annual salary of two thousand dollars, the same to be paid out of the funds appropriated for paying the expenses of the said court.

**§8589. — Payable Quarterly.** §2. He shall draw his salary from the time of entering upon the duties of his office and at the end of each quarter the state auditor shall draw a warrant on the state treasurer in favor of said clerk of the supreme court for one-fourth the amount of his annual salary.

## COMMISSIONERS.

**AN ACT** providing for the appointment of court commissioners and fixing their powers, duties and jurisdiction, and repealing all laws in conflict herewith. General repeal. Approved March 13, 1909. Laws '09 p 418.



**§8590. Court Commissioners.** §1. There may be appointed in each county, by the judge of the superior court having jurisdiction therein, a court commissioner for said county. Such commissioner shall be a citizen of the United States and an elector of the county in which he may be appointed, and shall reside at the county seat of such county, and shall hold his office during the pleasure of the judge appointing him.

Referees trial by §8531.

T. 130.

Mandamus remedy for capricious reduction by county commissioners if court commissioners pay, *State ex rel. Yeargin v. Maschke* 90 W. 249.

"At chambers" under former law confers powers of judge prior to adoption of constitution and commissioner may try causes that do not require a jury and enter judgment which is final unless reviewed by the superior court, *Peterson v. Dillon* 27 W. 78.

Act applies to courts in all counties—powers, *Howard v. Hanson* 49 W. 314.

Former law intended to keep courts always open, *Munroe v. Schwabacher* 2 W.

**§8591. Powers.** §2. Such court commissioner shall have power, authority and jurisdiction, concurrent with the superior court and the judge thereof, in the following particulars:

(a) To hear and determine all matters in probate, to make and issue all proper orders therein, and to issue citations in all cases where same are authorized by the probate statutes of this state;

(b) To grant and enter defaults and after ten days from the entry thereof, to enter judgment thereon;

(c) To issue temporary restraining orders and temporary injunctions, and to fix and approve bonds thereon.

(d) To act as referee in all matters and actions referred to him by the superior court as such, with all the powers now conferred upon referees by law.

(e) To hear and determine all proceedings supplemental to execution, with all the powers conferred upon the judge of the superior court in such matters.

(f) To hear and determine all petitions for the adoption of children, for the dissolution of incorporations, and to change the name of any person.

(g) To hear and determine all applications for the commitment of any person to the hospital for the insane, with all the powers of the superior court in such matters: Provided, That in cases where a jury is demanded, same shall be referred to the superior court for trial.

(h) To hear and determine all complaints for the commitment of minors to the state reform or industrial school, with all powers conferred upon the superior court in such matters.

(i) To grant adjournments, administer oaths, preserve order, compel attendance of witnesses, and to punish for contempts in the refusal to obey or the neglect of his lawful orders made in any matter before him as fully as the judge of the superior court.

(j) To take acknowledgments and proofs of deeds, mortgages and all other instruments requiring acknowledgment under the laws of this state, and to take affidavits and depositions in all cases.

(k) To provide an official seal, upon which shall be engraved the words "Court Commissioner," and the name of the county for which he may be appointed, and to authenticate his official acts therewith in all cases where same is necessary.

(l) To charge and collect, for his own use, the same fees for the official performance of official acts mentioned in sub-sections "(d)" and "(j)" herein as are provided by law for referees and notaries public.

In criminal case has no power to accept must be done in open court, *State v. Philip* plea of guilty and enter judgment the same 44 W. 615.

**§8592. Revision by Superior Court.** §3. All of the acts and proceedings of court commissioners hereunder shall be subject to revision by the superior court. Any party in interest may have such revision upon demand made by written motion, filed with the clerk of the superior court, within ten days after the entry of any order or judgment of the court commissioner. Such revision shall be upon the records of the case, and the findings of fact and conclusions of law entered by the court commissioner, and unless a demand for revision is made within ten days from the entry of the order or judgment of the court commissioner, his orders and judgments shall be and become the orders

and judgments of the superior court, and from same an appeal may be taken to the supreme court in all cases where an appeal will lie from like orders and judgments entered by the judge.

**§8593. Salary.** §4. Each court commissioner appointed hereunder shall be allowed a salary, in addition to the fees herein provided for, in such sum as the board of county commissioners may designate. said salary to be paid at the time and in the manner as the salary of other county officials.

**§8594. Oath.** §5. Court commissioners appointed hereunder shall, before entering upon the duties of such office, take and subscribe an oath to support the constitution of the United States, the constitution of the State of Washington, and to perform the duties of such office fairly and impartially and to the best of his ability.

### REPORTERS.

**AN ACT** providing for the appointment of official court reporters in the State of Washington, prescribing their duties, oath of office, and qualifications, and providing for their compensation and the manner of their appointment. Approved March 19, 1913. Laws '13 ch. 126.

**§8595. Official Court Reporters.** §1. It shall be the duty of each superior court judge in counties or judicial districts in the State of Washington having a population of over thirty thousand inhabitants to appoint a stenog-

**§8595. Official Court Reporters.** §1. It shall be the duty of each superior court judge in counties or judicial districts in the State of Washington having a population of over twenty-seven thousand inhabitants to appoint a stenographer to be attached to the court holden by him (except, for the sake of economy, where in counties or judicial districts having more than one judge there is not sufficient trial work to require the services of two or more official reporters, the judges of such courts may, provided their trial dockets can be satisfactorily arranged so as not to delay the trials of cases, appoint one official reporter jointly to act as official reporter for their respective courts), who shall have had at least three years' experience as a skilled, practical court reporter, or who upon examination shall be able to report and transcribe accurately one hundred fifty words per minute of the judge's charge or one hundred seventy-five words of testimony for five consecutive minutes; said test of efficiency, in the event of inability to meet the qualifications as to length of time of experience, to be given by a committee of three of the attorneys of the county or district in which the said stenographer is seeking to act as official reporter, and such stenographer shall thereupon become an officer of the court and shall be designated and known as the official reporter for the court or district for which he is appointed. Each official reporter so appointed shall hold office during the term of office of the judge appointing him, but may be removed for incompetency, misconduct or neglect of duty, and before entering upon the discharge of his duties shall take an oath to perform faithfully the duties of his office, and file a bond in the sum of two thousand dollars (\$2,000) for the faithful discharge of his duties. No person shall be appointed to the office of official reporter who is not a citizen of and a duly qualified elector in the State of Washington. L. '21 ch. 42.

services of the official reporter, the presiding judge shall grant such request, or upon his own motion such presiding judge may order a full report of the testimony, exceptions taken, and all other oral proceedings; in which case the official reporter shall cause accurate shorthand notes of the oral testimony, exceptions taken, and other oral proceedings had, to be taken, except when the judge and attorneys dispense with his services with respect to any portion of the proceedings therein, which notes shall be filed in the office of the clerk of the superior court where such trial is had.



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(b) To grant and enter defaults and after ten days from the entry thereof, to enter judgment thereon;

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**§8593. Salary.** §4. Each court commissioner appointed hereunder shall be allowed a salary, in addition to the fees herein provided for, in such sum as the board of county commissioners may designate. said salary to be paid at the time and in the manner as the salary of other county officials.

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Act valid—title valid—transcript as evidence—fees—act uniform—is equal protection—districts excepted a moot question, State ex rel. Lindsey v. Derybshire 79 W. 227.

**§8596. Duties—Notes to Be Filed.** §2. It shall be the duty of each official reporter appointed under this act to attend every term of the superior court in the county or judicial district for which he is appointed, at such times as the judge presiding may direct; and upon the trial of any cause in any court, if either party to the suit or action, or his attorney, request the services of the official reporter, the presiding judge shall grant such request, or upon his own motion such presiding judge may order a full report of the testimony, exceptions taken, and all other oral proceedings; in which case the official reporter shall cause accurate shorthand notes of the oral testimony, exceptions taken, and other oral proceedings had, to be taken, except when the judge and attorneys dispense with his services with respect to any portion of the proceedings therein, which notes shall be filed in the office of the clerk of the superior court where such trial is had.



**§8597. Pay—Vouchers.** §3. Each official reporter so appointed shall be paid a compensation at the rate of ten dollars (\$10) per diem for every day that he is actually in attendance upon said court pursuant to the direction of the court, which compensation shall be paid out of the county treasury where such court is held, as other expenses of the court are paid; and the sworn statement of the official reporter as to the number of days' attendance upon the court, when certified as correct by the judge presiding, shall be a sufficient voucher to the county auditor, upon which he shall draw his warrant upon the treasurer of the county in favor of the official reporter.

Fraction of a day counted full day, State *ex Greb v. Huron* 102 W. 328.

**§8598. Fee for Fund.** §4. In each civil action hereafter commenced the sum of one dollar (\$1) shall be paid by the plaintiff at the time of the filing of the complaint to the clerk of the court, and at the time of the appearance of the defendant, or any defendant appearing separately, there shall be paid in to the clerk of the court one dollar (\$1), and these sums so paid shall be taxed as costs in the case, and collected from the unsuccessful party in said action, and shall be known as stenographers' costs, and shall be paid by the clerk of said court into the county treasury of the county in which said action is commenced.

**§8599. Transcripts—Fees.** §5. When shorthand notes have been taken in any cause as in this act provided, if the court, or either party to the suit or action, or his attorney, requests a transcript of the notes into long hand, the official reporter shall make, or cause to be made, with reasonable diligence, full and accurate typewritten transcript of the testimony and other proceedings, which shall, when certified to, as hereinafter provided, be filed with the clerk of the court where such trial is had for the use of the court or parties to the action. The fees of the reporter for making such transcript shall be fifteen cents per folio of one hundred words for the original copy, and five cents per folio for each carbon copy ordered before the original is made, or made at the same time as the original, and when such transcript is ordered by any party to any such suit or action said fees shall be paid forthwith by the party ordering the same, and in all cases where a transcript is made as provided for under the provisions of this act the cost thereof shall be taxable as costs in the case, and shall be so taxed as other costs in the case are taxed: Provided, That when the defendant in any criminal cause shall present to the judge presiding satisfactory proof, by affidavit or otherwise, that he is unable to pay for such transcript, the presiding judge, if in his opinion justice will thereby be promoted, may order said transcript to be made by the official reporter, in which case the official reporter shall be paid for preparing said transcript ten cents per folio for the original copy and five cents per folio for each carbon copy ordered at the same time as the original or made at the same time as the original, which transcript fee shall be paid in like manner as the per diem fees are paid as specified in section three of this act.

**§8600. Transcripts as Evidence.** §6. The report of the official reporter, when transcribed and certified as being a correct transcript of the stenographic notes of the testimony, or other oral proceedings had in the matter, shall be prima facie a correct statement of such testimony or other oral proceedings had, and the same may thereafter, in any civil cause, be read in evidence as competent testimony, when satisfactory proof is offered to the judge presiding that the witness originally giving such testimony is then dead or without the jurisdiction of the court, subject, however, to all objections the same as though such witness were present and giving such testimony in person.

**§8601. Transcripts after Reporter Out of Office.** §7. When the official reporter who has taken notes in any cause, shall thereafter cease to be such official reporter, any transcript thereafter made by him therefrom, or made by any competent person under the direction of the court, and duly certified to by the person making the same, under oath, as a full, true and correct transcript of said notes, the same shall have full force and effect the same as though certified by an official reporter of said court.

**§8602. Reporter Pro Tem.** §8. In the event of the absence or inability of the official reporter to act, the presiding judge may appoint a competent stenographer to act pro tem, who shall perform the same duties as the official reporter, and whose report when certified to, shall have the same legal effect as the certified report of the official reporter. The reporter pro tem shall possess the qualifications and take the oath prescribed for the official reporter, and shall file a like bond, and shall receive the same compensation.

**§8603. Judge's Stenographer—Pay.** §9. In all counties or judicial districts, except counties of the first class and class "A" counties, having a regularly appointed official reporter, such official reporter shall act as amanuensis to the court where he is appointed, and the court shall allow per diem therefor as provided in this act: Provided, that in no event shall the per diem for such work exceed ten days in any one calendar month: And provided further, that said official reporter shall be allowed at least ten days' per diem for his services as reporter and amanuensis in each calendar month that the court where he is appointed is in session. L '19 ch 66.

**§8604. Files Taken Out by Reporter.** §10. Official reporters or reporters pro tem may, without order of court, upon giving a proper receipt therefor, procure at all reasonable hours from the office of the clerk of the court, any files or exhibits necessary for use in the preparation of statements of fact or transcribing portions of testimony or proceedings in any cause reported by them.

**§8605. Office Supplies.** §11. Necessary supplies for reporting and for the preparation of transcripts in criminal cases shall be furnished by the county. Typewriters and all other supplies in all other cases shall be furnished by the stenographers. In counties where arrangements can be made therefor, suitable office room shall be furnished the official reporter.

**§8606. Transfer of Reporters.** §12. At the request of either party to an action an official reporter from the same or any other district in the state may be substituted for the official reporter of the court in which the action is being tried for the purpose of reporting the trial of said action: Provided, That the party or parties to the action requesting such substitution pay or secure to be paid to the clerk of the court the necessary traveling and hotel expenses of the official reporters so substituted as aforesaid.

**§8607. Act Does Not Apply, Where.** §13. This act shall not apply to any county having a population of two hundred and eighty thousand, or over. L '19 133. *Classification of counties valid, State ex rel. Vance v. Frater* 84 W. 466.

## SUPERIOR COURT.

**AN ACT** relating to superior courts and the formation of judicial districts in the counties of Jefferson, Island, Clallam, Snohomish, Whatcom, San Juan, and Skagit. Approved March 13, 1917. Laws '17 p 340.

**§8608. Jefferson and Clallam One District.** §1. The counties of Jefferson and Clallam shall constitute one judicial district, and be entitled to one superior judge, and the superior judge heretofore elected in and for the counties of Jefferson, Island, and Clallam, shall, for the remainder of his term, be superior judge in and for the counties of Jefferson and Clallam.

**§8609. Snohomish and Island One District.** §2. The counties of Snohomish and Island shall constitute one judicial district, and be entitled to two superior judges, and the superior judges heretofore elected in and for the county of Snohomish shall, for the remainder of their terms, be superior judges in and for the counties of Snohomish and Island.

**§8610. Election of Judges.** §3. At the general election in November, 1920, there shall be elected one judge of the superior court for the judicial district composed of Jefferson and Clallam counties, and two judges of the superior court for the judicial district composed of Snohomish and Island counties, who shall hold their respective offices for the term of four years and until their successors are elected and qualified, and every four years thereafter there shall be elected at the general election one judge for the judicial district composed of Jefferson and Clallam coun-



ties and two judges for the judicial district composed of Snohomish and Island counties, whose terms of office shall be four years from the second Monday in January next succeeding their election, and until their successors are elected and qualified.

**§8611. Whatcom and San Juan One District.** §4. The counties of Whatcom and San Juan shall constitute one judicial district and be entitled to two superior judges and the superior judges heretofore elected in and for the county of Whatcom shall be the superior judges for said counties of Whatcom and San Juan.

**§8612. Skagit One District.** §5. The county of Skagit shall constitute one judicial district and be entitled to one superior judge and the superior judge heretofore elected in and for the counties of Skagit and San Juan shall be the superior judge for Skagit county.

**AN ACT in relation to the organization, powers and duties of the superior courts and declaring an emergency.** Approved March 27, 1890. Laws '90 p 341.

**§8613. Judges to Be Elected.** §1. At the general election to be held in eighteen hundred and ninety-six there shall be elected in the county of \* \* \* Whitman, one superior judge; in the counties [county] of Walla Walla, one superior judge; in the counties of Columbia, Garfield and Asotin, jointly, one superior judge. \* \* L. 95 176; L. '90 341.

Act '91 p 117 is repealed by this act—counties, State ex rel. Dustin v. Rusk 15 title of act is sufficient to authorize new W. 403.

districts—grouping of counties in the con- Judges are state officers, State ex rel. stitution empowers legislature to group Dyer v. Twichell 4 W. 715.

**§8613. King County.** §1. That hereafter there shall be nine judges of the superior court of the State of Washington in and for King county. L. '11 575.

**§8614. Chehalis County.** §1. That hereafter there shall be two judges of the superior court of the State of Washington, in and for Chehalis county. L. '09 227.

**§8615. Thurston and Mason Counties.** §1. From and after the passage and approval of this act there shall be two judges of the superior court of the State of Washington in and for Thurston and Mason counties. L. '13 ch 17.

**§8616. Cowlitz, Skamania and Klickitat.** §1. The counties of Cowlitz, Skamania and Klickitat shall constitute one judicial district and be entitled to one superior judge. L. '11 642.

**§8617. Clarke County.** §2. The county of Clarke shall constitute a judicial district and be entitled to one superior judge \* \* \* L. '11 642.

**§8618. Lewis County.** §1. That hereafter there shall be in the county of Lewis one superior judge. L. '11 644.

**§8619. Pacific and Wahkiakum Counties.** §2. That hereafter there shall be in the counties of Pacific and Wahkiakum, jointly, one superior judge. L. '11 644.

**§8620. Pierce County.** §1. Hereafter there shall be four judges of the superior court of the State of Washington, in and for Pierce county. L. '09 11.

**§8621. Kitsap County.** §1. From and after the passage and approval of this act, there shall be in the County of Kitsap one Superior Judge, \* \* \*. L. '05 59.

**§8622. Spokane County.** §1. Hereafter, there shall be five judges of the Superior Court of the State of Washington in and for Spokane county. L. '09 96.

**§8623. Stevens, Ferry, Okanogan, Douglas, Grant and Chelan.** §1. \* \* \* there shall be elected in the county of Stevens \* \* \* one superior judge; in the counties of Ferry and Okanogan jointly, one

superior judge; in the county of Douglas; \* \* \* one superior judge; and in the county of Chelan one superior judge. L. '07 401.

§8624. **Whatcom, Kittitas, Benton, Franklin, Adams, and Lincoln.** §1. \* \* \* there shall be elected in the county of Whatcom, two superior judges; \* \* \* in the county of Kittitas one superior judge; in the counties of Benton, Franklin and Adams jointly, one superior judge; in the county of Lincoln one superior judge; \* \* \* L. '07 140.

§8625. **Yakima County.** §1. Hereafter there shall be two judges of the superior court of the State of Washington, in and for Yakima county. L. '11 332.

§8626. **Terms of Office.** §3. The superior judges elected under the constitution, at the election held, October 1st, 1889, shall hold their offices for the period of three years, and until their successors shall be elected and qualified, and the additional judge to be elected at the general election of 1890, and thereafter the term of office of all superior judges in this state shall be for four years from the second Monday in January next succeeding their election, and until their successors are elected and qualified.

§8627. **Vacancies.** §4. If a vacancy occur in the office of judge of the superior court, the governor shall appoint a person to hold the office until the election and qualification of a judge to fill the vacancy, which election shall be at the next succeeding general election, and the judge so elected shall hold office for the remainder of the unexpired term.

§8628. **Jurisdiction.** §5. The superior court shall have original jurisdiction

In all cases in equity, and

In all cases at law which involve the title or possession of real property, or

The legality of any tax, impost, assessment, toll or municipal fine, and

In all other cases in which the demand, or the value of the property in controversy amounts to one hundred dollars, and

In all criminal cases amounting to felony, and

In all cases of misdemeanor not otherwise provided for by law;

Of actions of forcible entry and detainer;

Of proceedings in insolvency;

Of actions to prevent or abate a nuisance;

Of all matters of probate, of divorce, and for annulment of marriage; and for

Such special cases and proceedings as are not otherwise provided for; and shall also have

Original jurisdiction in all cases, and of all proceedings in which jurisdiction shall not have been by law vested exclusively in some other court; and

Shall have the power of naturalization and to issue papers therefor. Said courts and the judges shall have power

To issue writs of mandamus, quo warranto, review, certiorari, prohibition, and

Writs of habeas corpus on petition by or on behalf of any person in actual custody in their respective counties.

Injunctions and writs of prohibition and of habeas corpus may be issued on legal holidays and non-judicial days.

Injunctive relief after appeal will not be granted, Van Siclen v. Muir 44 W. 361.

Jurisdiction in probate, §9929.

§8629. **Appellate Jurisdiction.** §6. The superior courts shall have such appellate jurisdiction in cases arising in justice's and other inferior courts, in their respective counties, as may be prescribed by law.

§8630. **Always Open.** §7. The superior courts are courts of record, and shall be always open, except on non-judicial days. They shall hold their sessions at the county seats of the several counties respectively. They shall hold regular and special sessions in the several counties of this state at such times as may be prescribed by the judge or judges thereof.



**§8631. Adjournments.** §8. Adjournments from day to day or from time to time, are to be construed as recesses in the sessions, and shall not prevent the court from sitting at any time.

**§8632. Process Reaches Throughout State—Venue.** §9. The process of the superior courts shall extend to all parts of the state: Provided, That all actions for the recovery of the possession of, quieting the title to, or for the enforcement of liens upon real estate, shall be commenced in the county in which the real estate or any part thereof, affected by such action, or actions, is situated.

All process directed to sheriff §1807.

Venue of actions generally, §8541.

**§8633. Temporary Judge.** §11. A case in the superior court of any county may be tried by a judge pro tempore who must be a member of the bar, agreed upon in writing by the parties litigant, or their attorneys of record, approved by the court, and sworn to try the case, and his action in the trial of such cause shall have the same effect as if he were a judge of such court. A judge pro tempore shall, before entering upon his duties in any cause, take and subscribe the following oath, or affirmation: "I do solemnly swear, (or affirm, as the case may be) that I will support the constitution of the United States, and the constitution of the State of Washington, and that I will faithfully discharge the duties of the office of judge pro tempore in the cause wherein ——— is plaintiff and ——— defendant, according to the best of my ability." He shall receive a compensation of ten dollars for each day engaged in said trial to be paid in the same manner as the salary of the superior judge.

Temporary judge has jurisdiction to hear motion for vacation of judgment, *Fisher v. Puget Sound etc. Co.* 34 W. 578.

Ex-judge may be made temporary judge for the purpose of completing case and certifying bill or statement, *Nelson v. Seattle Traction Co.* 25 W. 602.

Parties will be presumed to have agreed

to judge—party appearing and trying case cannot question legality of appointment—regular judge cannot vacate judgment of special judge, *State ex rel. Coughill v. Sachs* 3 W. 691.

That judge was not sworn cannot be raised first time on appeal, *First Nat. Bank v. Parker* 28 W. 234.

**§8634. Time for Decision Limited.** §12. Every case submitted to a judge of a superior court for his decision shall be decided by him within ninety days from the submission thereof. Provided, That if, within said period of ninety days a rehearing shall have been ordered, then the period within which he is to decide shall commence at the time the cause is submitted upon such rehearing, and upon willful failure of any such judge so to do, he shall be deemed to have forfeited his office.

Mandamus will not lie to compel court days from submission thereof as appeal to redocket appeal from State Land Commissioners dismissed more than ninety etc. *Co. v. Moore* 21 W. 629.

**§8635. Rules.** §13. The judges of the superior courts, shall from time to time, establish uniform rules for the government of the superior courts.

General rules at §8650a.

Cited 76 W. 460.

**§8636. Report to Supreme Court.** §14. Superior judges shall on or before the first day of November in each year, report in writing to the judges of the supreme court such defects and omissions in the laws as their experience may suggest.

**§8637. Oath of Office.** §15. Every judge of a superior court shall, before entering upon the duties of his office, take and subscribe an oath that he will support the constitution of the United States, and the constitution of the State of Washington and will faithfully and impartially discharge the duties of judge to the best of his ability, which oath shall be filed in the office of the secretary of state. Such oath or affirmation to be in form substantially the same as prescribed for judges of the supreme court.

**§8638. Seal.** §17. The seals of the superior courts of the several counties of the state shall be until otherwise provided by law, the vignette of General George Washington, with the words "Seal of the superior court of ——— county, State of Washington," surrounding the vignette.

Supplementary—AN ACT in relation to the holding of sessions of courts.  
Approved February 25, 1891. Laws '91 p 89.

**§8639. Courts to Be Held at County Seat.** §1. The superior courts shall hold their sessions at the county seats of the several counties respectively.

**§8640. Failure of Session Shall Not Defeat Proceedings.** §2. No proceeding in a court of justice, in any action, suit, or proceeding pending therein, is affected by a vacancy in the office of any or all of the judges, or by the failure of a session of the court.

Successor of judge may grant new trial —discretion, *Carkonen v. Columbia & P. S. R. Co.* 102 W. 11.

Supplementary—**AN ACT to provide for the payment of bailiffs of the superior courts.** Approved February 16, 1891. Laws '91 p 17.

**§8641. Bailiff's Salary.** §1. Bailiffs of the several superior courts in counties having a population of more than one hundred thousand in this state, appointed by the respective judges thereof, shall be paid for their services one hundred dollars (\$100.00) per month by the county in which the court is held, with no allowance for overtime. Bailiffs of the superior courts in the other counties of this state, appointed by the respective judges thereof, shall be paid for their services not to exceed three dollars (\$3.00) per day by the county in which the court is held. L. 17 337, R.&B. §8983.

**§8642. — Payment.** §2. From time to time, the superior judge of the county shall certify the amount due any such bailiff, and order the payment thereof; and thereupon the county auditor shall issue to such bailiff a warrant on the county treasurer, payable out of the general fund, for the amount so certified.

**AN ACT relating to the salaries of Superior Court bailiffs in counties having a population of more than one hundred fifty thousand.** Approved March 17, 1919. L'19 ch141.

**§8642a. Bailiffs' Salaries, Counties 150,000.** §1. Bailiffs of the several superior courts appointed by the respective judges thereof, in counties of

**§8642a. Bailiff's Salaries, Counties 125,000.** §1. Bailiffs of the several superior courts, appointed by the respective judges thereof, in counties of this state having a population of more than one hundred twenty-five thousand, shall be paid for their services one hundred and twenty-five dollars per month by the county in which the court is held. L. '21 ch. 25.

**§8643. Power of Judge Outside of County.** §1. Any judge of the Superior Court of the State of Washington shall have power, in any county within his district:

(1) To sign all necessary orders and papers in probate matters pending in any other county in his district;

(2) To issue restraining orders, and to sign the necessary orders of continuance in actions or proceedings pending in any other county in his district;

(3) To decide and rule upon all motions, demurrers, issues of fact or other matters that may have been submitted to him in any other county. All such rulings and decisions shall be in writing and shall be filed immediately with the clerk of the proper county.

Provided, That nothing herein contained shall authorize the judge to hear any matter outside of the county wherein the cause or proceeding is pending, except by consent of the parties.

Trial set by order made outside county valid, *Driscall v. Dufur* 45 W. 494.  
sustained, *Portland etc. R. Co. v. Skamania Boom Co.* 59 W. 191. Judge cannot try application for temporary alimony in another county, *State ex rel. Clark v. Neal* 19 W. 642.

Motion for new trial heard only by consent, *Shaw v. Spencer* 57 W. 587.

Order extending time of filing statement without consent made outside county in- certain county findings may be signed out of county, *Matheson v. Ward* 24 W. 407.

**§8644. Decision.** §2. Any judge of the Superior Court of the State of Washington who shall have heard any cause, either upon motion, demurrer, issue of fact, or other matter in any county out of his district, may decide, rule upon, and determine the same in any county in this state, which decision, ruling and determination shall be in writing and shall be filed immediately with the clerk of the county where such cause is pending.



**§8631. Adjournments. §8.** Adjournments from day to day or from time to time, are to be construed as recesses in the sessions, and shall not prevent the court from sitting at any time.

**§8632. Process Reaches Throughout State—Venue. §9.** The process of the superior courts shall extend to all parts of the state: Provided, That all actions for the recovery of the possession of, quieting the title to, or for the enforcement of liens upon real estate, shall be commenced in the county in which the real estate or any part thereof, affected by such action, or actions, is situated.

All process directed to sheriff §1807.

Venue of actions generally, §8541.

**§8633. Temporary Judge. §11.** A case in the superior court of any county may be tried by a judge pro tempore who must be a member of the bar, agreed upon in writing by the parties litigant, or their attorneys of record, approved by the court, and sworn to try the case, and his action in the trial of such cause shall have the same effect as if he were a judge of such court. A judge pro tempore shall, before entering upon his duties in any cause, take and subscribe the following oath, or affirmation: "I do solemnly swear, (or affirm, as the case may be) that I will support the constitution of the United States, and the constitution of the State of Washington, and that I will faithfully discharge the duties of the office of judge pro tempore in the cause wherein \_\_\_\_\_ is plaintiff and \_\_\_\_\_ defendant, according to the best of my ability." He shall receive a compensation of ten dollars for each day engaged in said trial to be paid in the same manner as the salary of the superior judge.

Temporary judge has jurisdiction to hear motion for vacation of judgment, *Fisher v. Puget Sound etc. Co.* 34 W. 578.

Ex-judge may be made temporary judge for the purpose of completing case and certifying bill or statement, *Nelson v. Seattle Traction Co.* 25 W. 602.

to judge—party appearing and trying case cannot question legality of appointment—regular judge cannot vacate judgment of special judge, *State ex rel. Coughlin v. Sachs* 3 W. 691.

That judge ~~was not sworn~~ cannot be

Parties will be presumed to

\_\_\_\_\_ or any such judge so \_\_\_\_\_ to have forfeited his office.

~~mandamus~~ will not lie to compel court days from submission thereof as appeal to redocket appeal from State Land Com. will lie, *State ex rel. Washington Dredging Commissioners dismissed more than ninety etc. Co. v. Moore* 21 W. 629.

**§8635. Rules. §13.** The judges of the superior courts, shall from time to time, establish uniform rules for the government of the superior courts.

General rules at §8650a.

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**§8636. Report to Supreme Court. §14.** Superior judges shall on or before the first day of November in each year, report in writing to the judges of the supreme court such defects and omissions in the laws as their experience may suggest.

**§8637. Oath of Office. §15.** Every judge of a superior court shall, before entering upon the duties of his office, take and subscribe an oath that he will support the constitution of the United States, and the constitution of the State of Washington and will faithfully and impartially discharge the duties of judge to the best of his ability, which oath shall be filed in the office of the secretary of state. Such oath or affirmation to be in form substantially the same as prescribed for judges of the supreme court.

**§8638. Seal. §17.** The seals of the superior courts of the several counties of the state shall be until otherwise provided by law, the vignette of General George Washington, with the words "Seal of the superior court of \_\_\_\_\_ county, State of Washington," surrounding the vignette.

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**§8639. Courts to Be Held at County Seat.** §1. The superior courts shall hold their sessions at the county seats of the several counties respectively.

**§8640. Failure of Session Shall Not Defeat Proceedings.** §2. No proceeding in a court of justice, in any action, suit, or proceeding pending therein, is affected by a vacancy in the office of any or all of the judges, or by the failure of a session of the court.

Successor of judge may grant new trial —discretion, *Carkonen v. Columbia & P. S. R. Co.* 102 W. 11.

Supplementary—**AN ACT to provide for the payment of bailiffs of the superior courts.** Approved February 16, 1891. Laws '91 p 17.

**§8641. Bailiff's Salary.** §1. Bailiffs of the several superior courts in counties having a population of more than one hundred thousand in this state, appointed by the respective judges thereof, shall be paid for their services one hundred dollars (\$100.00) per month by the county in which the court is held, with no allowance for overtime. Bailiffs of the superior courts in the other counties of this state, appointed by the respective judges thereof, shall be paid for their services not to exceed three dollars (\$3.00) per day by the county in which the court is held. L. 17 337, R.&B. §8983.

**§8642. — Payment.** §2. From time to time, the superior judge of the county shall certify the amount due any such bailiff, and order the payment thereof; and thereupon the county auditor shall issue to such bailiff a warrant on the county treasurer, payable out of the general fund, for the amount so certified.

**AN ACT relating to the salaries of Superior Court bailiffs in counties having a population of more than one hundred fifty thousand.** Approved March 17, 1919. L'19 ch141.

**§8642a. Bailiffs' Salaries, Counties 150,000.** §1. Bailiffs of the several superior courts, appointed by the respective judges thereof, in counties of this state having a population of more than one hundred fifty thousand, shall be paid for their services one hundred and twenty-five dollars per month by the county in which the court is held.

Supplementary—**AN ACT relating to the powers of judges of the Superior Court of the State of Washington, and declaring an emergency.** Approved March 7, 1901. Laws '01 p 76.

**§8643. Power of Judge Outside of County.** §1. Any judge of the Superior Court of the State of Washington shall have power, in any county within his district:

(1) To sign all necessary orders and papers in probate matters pending in any other county in his district;

(2) To issue restraining orders, and to sign the necessary orders of continuance in actions or proceedings pending in any other county in his district;

(3) To decide and rule upon all motions, demurrers, issues of fact or other matters that may have been submitted to him in any other county. All such rulings and decisions shall be in writing and shall be filed immediately with the clerk of the proper county.

Provided, That nothing herein contained shall authorize the judge to hear any matter outside of the county wherein the cause or proceeding is pending, except by consent of the parties.

Trial set by order made outside county valid, *Driscoll v. Dufur* 45 W. 494.

sustained, *Portland etc. R. Co. v. Skamania Boom Co.* 59 W. 191.

Motion for new trial heard only by consent, *Shaw v. Spencer* 57 W. 587.

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**§8644. Decision.** §2. Any judge of the Superior Court of the State of Washington who shall have heard any cause, either upon motion, demurrer, issue of fact, or other matter in any county out of his district, may decide, rule upon, and determine the same in any county in this state, which decision, ruling and determination shall be in writing and shall be filed immediately with the clerk of the county where such cause is pending.

Judge cannot try application for temporary alimony in another county, *State ex rel. Clark v. Neal* 19 W. 642.

Prior to statute though trial required in certain county findings may be signed out of county, *Matheson v. Ward* 24 W. 407.



Findings and conclusions signed outside county of trial—notice not necessary, *Allen v. Allen* 96 W. 689.

Time allowed judge—either party may cause entry—power of two judges in receivership, *State ex rel. Calhoun v. Superior Court* 86 W. 492.

Judge having heard cause out of his district may rule thereon anywhere in state, *Rice v. Ahlman* 70 W. 6.

Parties may stipulate that motion to vacate judgment may be heard in another county by a different judge, *Meisenheimer v. Meisenheimer* 55 W. 32.

Supplementary—AN ACT to provide for the holding of sessions of the superior court in any county in this state by a judge of the superior court of any other county, or counties, therein; and declaring an emergency. Approved March 3, 1893. Laws '93 p 67.

**§8645. Judge to Hold Court in Another County. §1.** Whenever a judge of the superior court of any county in this state, or a majority of such judges in any county in which there is more than one judge of said court, shall request the governor of the state to direct a judge of the superior court of any other county to hold a session of the superior court of any such county as is first herein above mentioned, the governor shall thereupon request and direct a judge of the superior court of some other county, making such selection as the governor shall deem to be most consistent with the state of judicial business in other counties to hold a session of the superior court in the county the judge shall have requested the governor as aforesaid. Such request and direction by the governor shall be made in writing, and shall specify the county in which he directs the superior judge to whom the same is addressed to hold such session of the superior court, and the period during which he is to hold such session. Thereupon it shall be the duty of the superior judge so requested, and he is hereby empowered, to hold a session of the superior court of the county specified by the governor, at the seat of judicial business thereof, during the period specified by the governor, and in such quarters as the county commissioners of said county may provide for the holding of such session.

Visiting judges have same power as required to be made of judge assuming duties and his action will be presumed regular—party without timely objection waives any objection in civil or criminal case, *State v. Holmes* 12 W. 169.

Provisions of the constitution regarding visiting judges is self-executing—no record

**§8546. — By Request of Other Judges. §2.** Whenever a like request shall be addressed by the judge, or by a majority of the judges (if there be more than one) of the superior court of any county, to the superior judge of any other county, he is hereby empowered, if he deem it consistent with the state of judicial business in the county or counties whereof he is a superior judge, (and in such case it shall be his duty to comply with such request), to hold a session of the superior court of the county the judge or judges whereof shall have made such request, at the seat of judicial business of such county, in such quarters as shall be provided for such session by the board of county commissioners and during such period as shall have been specified in the request, or such shorter period as he may deem necessary by the state of judicial business in the county or counties whereof he is a superior judge.

Assignment by Governor, Const., art. 4, §5.

**§8647. As Many Sessions as Judges. §3.** In any county where there shall be more than one superior judge, or in which a superior judge of another county may be holding a session of the superior court, as in this act provided, there may be as many sessions of the superior court at the same time as there are judges thereof, or assigned to duty therein by the governor, or responding to a request made as provided in section 2 of this act. In such cases the business of the court shall be so distributed and assigned by law, or in the absence of legislation therefor, by such rules and orders of the court, as shall best promote and secure the convenient and expeditious transaction thereof. Judgments, decrees, orders and proceedings of any session of the superior court held by one or more of the judges of said court, or by any judge of the superior court of another county, pursuant to the provisions of this act, shall be equally effectual as if all the judges of such court presided at such session.

Judge other than trial judge may extend time of filing statement of facts, Wallace v. Oceanic Packing Co. 25 W. 143.

When judge takes case he must complete it whether it is law or equity case, Hill v.

Young 7 W. 33.

Refusal to transfer cause to department where preliminary orders were made not error, State v. Newcomb 58 W. 414.

**§8648. Expenses of Judges.** §4. Any judge of the superior court of any county in this state who shall hold a session of the superior court of any other county, in pursuance of the provisions of this act, shall be entitled to receive from the county in which he shall hold such sessions the amount of his actual traveling expenses from his residence to the place where he shall hold such sessions, and on his return to his residence, and of the actual traveling expenses of his sojourn at the place where he shall hold such sessions during the continuance thereof. The county clerk of such county shall, upon the presentation to him by such judge of a statement of such expenses, verified by his affidavit, issue to such judge a certificate that he is entitled to the amount thereof; and upon presentation of such certificate to the auditor of such county he shall draw a warrant on the general fund of such county for the amount in favor of such judge.

As many sessions as judges, Const., Art. 4, §4.

**AN ACT** providing for the payment of certain expenses of, and the manner in which the salaries of the judges of the supreme and superior courts shall be paid and declaring an emergency to exist. Approved January 27, 1890. Laws '90 p 329.

**§8649. Superior Judge Payable Monthly.** §2. The county auditor of each county shall draw his warrant on the treasurer of such county on the first Monday of each month for the amount of salary due for the previous month from such county to the judge of the superior court thereof, and said warrant shall be paid by said treasurer out of the salary fund of said county.

L '93 45. Salary of judges §8577.

**§8650. Several Counties Paying One Judge.** §3. Where there is only one judge of the superior court for two or more counties, the auditors thereof acting together shall apportion among or between such counties, according to the assessed valuation of their taxable property, the amount of such judge's salary, that each county shall pay.

## SUPREME COURT.

Reports, distribution of §6555.

**AN ACT** increasing the number of judges of the Supreme Court of the State of Washington, providing for the court en banc and for separate departments of such court, for the holding of terms thereof, for the method of hearing and determining causes therein, authorizing the making of rules: and declaring an emergency. Approved February 26, 1909. Laws '09 p 33.

**§8651. Nine Judges.** §1. The Supreme Court, from and after the taking effect of this act, shall consist of nine judges.

Appeals to supreme court, §7290.

Exceptions on appeal, §7809.

Power of judges limited to express authority, §8568.

Power to appoint bailiffs, §8576.

Supreme court shall appoint clerk and reporter, §8671.

Act valid—rehearing en banc not a right, State ex rel. Vanderveer v. Gormley 53 W. 543.

**§8652. Three Judges Elected Biennially.** §2. At the next general election, and at each biennial general election thereafter, there shall be elected three judges of the supreme court, to hold for the full term of six years, and until their successors are elected and qualified, commencing with the second Monday in January succeeding their election. L. '11 613.

**§8653. Unexpired Terms.** §2-a. A person elected judge of the supreme court to fill a vacancy for an unexpired term shall not qualify for office until the second Monday in January succeeding his election. L. '11 613.

**§8654. Departments—En Banc.** §3. There shall be two departments of the Supreme Court, denominated respectively Department One and Depart-



ment Two. The Chief Justice shall assign four of the associate judges to each department and such assignment may be changed by him from time to time; Provided, That the associate judges shall be competent to sit in either department and may interchange with one another by agreement among themselves, or if no such agreement be made, as ordered by the Chief Justice. The Chief Justice may sit in either department and shall preside when so sitting, but the judges assigned to each department shall select one of their number as presiding judge. Each of the departments shall have the power to hear and determine causes, and all questions arising therein, subject to the provisions in relation to the court en banc. The presence of three judges shall be necessary to transact any business in either of the departments, except such as may be done at chambers, but one or more of the judges may from time to time adjourn to the same effect as if all were present, and a concurrence of three judges shall be necessary to pronounce a decision in each department; Provided That if three do not concur, the cause shall be reheard in the same department or transmitted to the other department, or to the court en banc.

**§8655. How Business Apportioned—Ordered En Banc.** §4. The Chief Justice shall from time to time apportion the business to the departments, and may, in his discretion, before a decision is pronounced, order any cause pending before the court to be heard and determined by the court en banc. When a cause has been allotted to one of the departments and a decision pronounced therein, the Chief Justice, together with any two associate judges, may order such cause to be heard and decided by the court en banc. Any four judges may, either before or after decision by a department, order a cause to be heard en banc. The decision of a department, except in cases otherwise ordered as hereinafter provided, shall not become final until thirty days after the filing thereof, during which period a petition for rehearing, or for a hearing en banc, may be filed, the filing of either of which, except as hereinafter otherwise provided, shall have the effect of suspending such decision until the same shall have been disposed of. If no such petition be filed the decision of a department shall become final thirty days from the date of its filing, unless during such thirty-day period an order for a hearing en banc shall have been made; Provided, That if for any cause the Chief Justice or a majority of the department rendering any decision shall be of the opinion that such decision should go into effect prior to thirty days after its filing, it shall go into effect, and a judgment issue thereon, any time after its filing and prior to such thirty-day period, upon being in writing approved by the Chief Justice and any two associate judges who took no part in rendering such decision. The effect of granting a petition for a rehearing, or of ordering a cause once decided by department to be heard en banc, shall be to vacate and set aside the decision. Whenever a decision shall become final, as herein provided, a judgment shall issue thereon.

**§8656. Court En Banc—Quorum.** §5. The Chief Justice, or any four judges, may convene the court en banc at any time, and the Chief Justice shall be the presiding judge of the court when so convened. The presence of five judges shall be necessary to transact any business, and a concurrence of five judges present at the argument shall be necessary to pronounce a decision in the court en banc; Provided, That if five of the judges so present do not concur in a decision, then reargument shall be ordered and all the judges qualified to sit in the cause shall hear the argument, but to render a decision a concurrence of five judges shall be necessary; and every decision of the court en banc shall be final except in cases in which no previous decision has been rendered in one of the departments, and in such cases the decision of the court en banc shall become final thirty days after its filing, unless during such period a petition for rehearing be filed. The filing of such petition within such period shall have the effect of suspending the decision until disposed of by the concurrence of five judges, Provided That if for any cause five judges shall be of the opinion that such decision should go into effect prior to thirty days after its filing, it shall go into effect any time after its filing and prior to such thirty-day period upon being in writing approved by six judges of such court. Whenever a decision shall become final, as herein provided, a judgment shall issue thereon.

**§8657. Acting Chief Justice.** §6. In cases of the absence of the Chief justice, or his inability to act, the judge having the shortest term to serve, not holding his office by appointment or election to fill a vacancy, shall perform the duties and exercise the powers of the Chief Justice during such absence or inability to act. In case there shall be two or more judges having in like manner the same short term, the other judges of the Supreme Court shall determine which of them shall perform the duties and exercise the powers of the Chief Justice during such absence or inability to act.

**§8658. Court Always Open.** §7. The Supreme Court shall always be open for the transaction of business except on non-judicial days. It shall hold regular sessions for the hearing of causes en banc, and in each of its departments, at the capital of the state at the respective times now provided by law for holding terms of the Supreme Court. Special sessions at the same place may be held at such other times as may be prescribed by the judges of such court.

Court always open §8664.

mittitur after term, Gordon v. Hillman 102

Court always open and may recall re- W. 411.

**§8659. Rules.** §8. The Supreme Court may from time to time institute such rules of practice and prescribe such forms of process to be used in such court and in the court en banc and each of its departments, and for the keeping of the dockets, records and proceedings, and for the regulation of such court, including the court en banc and in departments, as may be deemed most conducive to the due administration of justice. Rules at. §7338a.

**AN ACT relating to the organization, powers and duties of the supreme court and declaring an emergency to exist.** Approved December 23, 1889. Laws '89 p 321.

**§8660. Number of Judges—Terms of Office.** §1. The supreme court shall consist of five judges, who shall be elected by the qualified electors of the state at large, at the general state election at the time and places at which state officers are elected, next preceding the expiration of the term of office of their predecessors respectively, and hold their offices for the term of six years from and after the second Monday in January next after their election: Provided, That the justices elected on the first Tuesday of October, 1889, shall have so classified or shall so classify themselves by lot, that two of them shall go out of office at the end of three years, two of them at the end of five years, and one at the end of seven years from the second Monday in January, 1890; and an entry of such classification shall have been or shall be made in the minutes of the court, signed by such judges, and they shall cause the result thereof to be certified to the secretary of state and filed in his office.

**Substitute—AN ACT to provide for the election of judges of the supreme court.** Approved February 6, 1893. Laws '93 p 8.

**§8661. Time of Election.** §1. There shall be elected by the qualified electors of this state, on the first Tuesday after the first Monday in November, 1894, and on the first Tuesday after the first Monday in November, every two years thereafter, as many judges of the supreme court, as there may be judges of said court whose terms of office shall expire on the second Monday in January next succeeding such election.

**§8662. Vacancies.** §2. If a vacancy occur in the office of a judge of the supreme court, the governor shall appoint a person to hold the office until the election and qualification of a judge to fill the vacancy, which election shall take place at the next succeeding general election at which a judge or judges of the supreme court shall be elected, and the judge so elected may qualify at any time within thirty days after his election, and shall hold the office for the unexpired term.

**§8663. Chief Justice.** §2. The judge having the shortest term to serve, not holding his office by appointment or election to fill a vacancy, shall be the chief justice, and shall preside at all sessions of the supreme court, and in case there shall be two judges having in like manner the same short term, the other judges of the supreme court shall determine which of



them shall be chief justice and in case of the absence of the chief justice, the judge having in like manner the shortest or next shortest term to serve shall preside. L '90 321.

**§8664. Sessions—Court Rooms and Incidentals.** §4. The supreme court shall always be open for the transaction of business except on non-judicial days. It shall hold regular sessions for the hearing of causes at the seat of government commencing on the second Mondays of January, May and October of each year, and special sessions at the same place, at such other times as may be prescribed by the justices thereof. If proper rooms in which to hold the court, and for the accommodation of the officers thereof, are not provided by the state, together with attendants furniture, fuel, lights, record books and stationery, suitable and sufficient for the transaction of business, the court, or any three justices thereof may direct the clerk of the supreme court to provide the same; and the expense thereof certified by any three justices to be correct, shall be paid out of the state treasury, out of any funds therein not otherwise appropriated. Such moneys shall be subject to the order of the clerk of the supreme court, and be by him disbursed on proper vouchers and accounted for by him in annual settlements with the state auditor.

**§8665. Quorum.** §5. It shall require a majority of the justices of the supreme court to form a quorum and pronounce a decision. In the determination of causes all decisions of the court shall be in writing, and the grounds of the decision shall be stated.

**§8666. Jurisdiction.** §6. The supreme court shall have original jurisdiction in habeas corpus, and quo warranto and mandamus as to all state officers, and appellate jurisdiction in all actions and proceedings, excepting that its appellate jurisdiction shall not extend to civil actions at law for the recovery of money or personal property when the original amount in controversy or the value of the property does not exceed the sum of two hundred dollars, unless the action involves the legality of a tax, impost, assessment, toll, municipal fine, or the validity of a statute. The supreme court shall also have power to issue writs of mandamus review, prohibition, habeas corpus, certiorari, and all other writs necessary and proper to the complete exercise of its appellate and revisory jurisdiction. Each of the judges shall have power to issue writs of habeas corpus to any part of the state, upon petition by or on behalf of any person held in actual custody, and may make such writs returnable before himself, or before the supreme court or before any superior court of the state or any judge thereof.

Supreme court of the United States will examine opinions for grounds of jurisdiction, and if judgment has sufficient reasons for its support without Federal questions such will not be considered, *Dibble v. Bellingham Bay Land Co.* 163 U. S. 63. Attorney's fees to defend judgment suspended on certiorari cannot be included to make up jurisdictional amount, *Leavitt v. Carr* 22 W. 361. The statute providing procedure in habeas corpus does not apply to the supreme court, but court may provide procedure, *In re Rafferty* 1 W. 382.

**§8667. Adjournments.** §7. Adjournments from day to day, or from time to time are to be construed as recesses in the sessions, and shall not prevent the court from sitting at any time.

**§8668. Judgment Final.** §8. The judgments and decrees of the supreme court shall be final and conclusive upon all the parties properly before the court.

**§8669. Court of Record.** §10. The supreme court shall be a court of record and shall be vested with all power and authority necessary to carry into complete execution all its judgments, decrees and determinations in all matters within its jurisdiction according to the rules and principles of the common law and the constitution and laws of this state.

**§8670. Form of Process.** §11. Its process shall run in the name of the "State of Washington," bear test in the name of the chief justice, be signed by the clerk of the court, dated when issued, sealed with the seal of the court, and made returnable according to law, or such rule or orders as may be prescribed by the court.

**§8671. Clerk and Reporter.** §13. The judges of the supreme court, shall appoint a clerk and a reporter of the decisions of the court, removable at their pleasure each of whom shall receive an annual salary as shall be provided by law: Provided, That the legislature may at any time provide for the election of such clerk and prescribe the term of his office.

**§8672. Oath of Office.** §14. The several judges of the supreme court, before entering upon the duties of their office, shall take and subscribe the following oath or affirmation: "I do solemnly swear (or affirm as the case may be) that I will support the constitution of the United States, and the constitution of the State of Washington and that I will faithfully and impartially discharge the duties of the office of judge of the supreme court of the State of Washington to the best of my ability." Which oath or affirmation may be administered by any person authorized to administer oaths, a certificate whereof shall be affixed thereto by the person administering the oath. And the oath or affirmation so certified, shall be filed in the office of the secretary of state.

**§8673. Report to Governor.** §16. The judges of the supreme court shall, on or before the first day of January in each year report in writing, to the governor such defects and omissions in the laws as they may believe to exist.

**§8674. Seal.** §17. The seal of the supreme court shall be the vignette of General George Washington, with the words "Seal of the supreme court, State of Washington," surrounding the vignette.

**AN ACT to provide for the payment of the salary of supreme court bailiffs.**  
Approved March 7, 1890. Laws '90 p 331.

**§8675. Salary of Bailiffs.** §1. Bailiffs of the supreme court are hereby entitled to and shall be paid three (\$3) dollars per diem.

**§8676. — Payment of.** §2. The state auditor shall issue his warrant for salary of supreme court bailiffs, upon receipt of certificate of time served, signed by any one or more of the supreme court judges, and attested by the clerk of the supreme court.

**AN ACT to prescribe the duties and fix the compensation of the reporter of the supreme court.** Approved December 20, 1889. Laws '89 p 320.

**§8677. Decisions to Be Reported.** §1. The reporter of the decisions of the supreme court must prepare a report of such cases decided as he may by the court be directed to report.

**§8678. Reporter Shall Prepare Syllabus.** §2. He shall prepare such decisions for publication by giving the title of each case, a syllabus of the points decided, a brief statement of the facts bearing on the points decided, the names of the counsel, and a reference to such authorities as are cited from standard reports and text-books that have a special bearing on the case; and he shall prepare a full and comprehensive index to each volume and prefix a table of cases reported.

**§8679. Reports to Be Published—Proofs.** §3. The reports must be published under the supervision of the court, and to that end each of the judges must be furnished by the reporter with proof-sheets of each volume, thirty days before its final publication.

**§8680. Corrections.** §4. Within thirty days after such proof sheets are furnished, the judges must return the same to the reporter with corrections or alterations, and he must make the corrections or alterations accordingly.



**§8681. Reporter May Take Records.** §5. The reporter may take the original opinions and papers in each case from the clerk's office and retain them in his possession not exceeding sixty days.

**§8682. Salary.** §6. The annual salary of the reporter of the decisions of the Supreme Court shall be three thousand five hundred (\$3,500.00) dollars. L. '09 578.

**AN ACT to provide for the publication and sale of the Washington Supreme Court Reports.** Approved March 11, 1905. Laws '05 p 330.

**§8683. Style of Volumes—Paper—Buckram Binding.** §1. The reports of the supreme court of the State of Washington shall be published in volumes of not less than seven hundred (700) pages, exclusive of indices and tables of cases reported, cases cited and statutes construed. The style of type used, the general typography and binding, shall be equal in quality and generally similar to that used in volume thirty-five (35) Washington Reports, official edition: Provided, That the reporter may require the publisher to have two more "ems" on each line and two more lines on each page. The publisher, under its contract with the state, may use in the publication of the reports, regular law book paper equal in quality to that used in volumes thirty-five (35) and ninety-one (91) of the Washington reports, and of weight not lighter than forty-five (45) pounds to the ream, when approved by the chief justice of the supreme court, and the reporter and the chief justice may authorize the furnishing of any portion of the volumes furnished to the state to be bound in buckram instead of sheep. L. '17 326, R.&B. §9066.

**§8684. Contract—Price.** §2. The reporter of the Supreme Court shall have no pecuniary interest in the volumes of the Reports, but they must be published under the supervision of the Chief Justice of the Supreme Court and reporter, by contract, for periods of ten years each, to be entered into as hereinafter provided, with a responsible person or persons who shall agree to publish and sell said Reports on the terms most advantageous to the State and to individuals resident in this State, and at a rate not to exceed two dollars and fifty cents (\$2.50) per bound volume, or three dollars per bound volume and the advance sheets of the opinions in such bound volume, delivered to the subscriber.

**§8685. Bids—Notice of.** §3. Before entering into said contract, it shall be the duty of the reporter to advertise for proposals for the publication of said Reports once each week for four consecutive weeks, in two daily papers published within this State. Such publication shall be commenced on the second Monday in June, 1905, and on the second Monday in June every ten years thereafter. The proposals shall be opened by the Chief Justice of the Supreme Court and the reporter of said Court. It shall be the duty of the Chief Justice and the reporter of the Supreme Court to consider all proposals for the publication of said Reports so submitted, and to award the contract to the person or persons who will agree to publish and sell the same, on the terms most advantageous to the State and to individuals resident in this State. The reporter shall execute the contract on behalf of the State.

**§8686. Contract—Bond.** §4. The contract must provide:

First. That each volume shall be published within sixty (60) days after the manuscript is delivered by the reporter to the publisher, and that stereotype plates be made of each volume to the end that the same may never be out of print. Second. That the entire manufacture of said volumes shall be done within the State of Washington. Third. That the volumes or any portion thereof, or any notes, indices, or tables of cases, that may be published in connection therewith, shall not be copyrighted by the publisher, but it may be optional with the Legislature at any time to direct the reporter to copyright the volumes for the benefit of the State. Fourth. That the publisher shall sell three hundred (300) copies of each volume to the State at the price named in the proposals, and keep on hand and for sale within the State, to individuals resident in this State, at the price therefor, named in the proposals, a sufficient number of each volume to supply all demands for a period of ten (10) years from the date of publication thereof. Fifth. The contract shall further provide that the publisher shall issue once each week in pamphlet

form, the opinions of the Supreme Court, with appropriate head notes, and table of cases; and sell the same to the subscribers to the Washington Reports at the price fixed in the proposals; and also, shall agree to mail without cost, a copy of each weekly issue, to each supreme judge, the reporter and attorney general, and to each judge of the superior court and prosecuting attorney of each county in this state, six copies to the state library, and six copies to the law department of the state university. Sixth. The contract shall further provide that the manufacture of the volumes shall be done to the entire satisfaction of the Chief Justice of the Supreme Court and the reporter, and that in case of wilfull failure or refusal on the part of the publisher to comply with the terms of the contract, the reporter may, with the approval of the Chief Justice, declare the same forfeited and void, by the giving of written notice to the publisher to that effect, and the Chief Justice and reporter shall re-let the contract for the remainder of the unexpired term of the contract, as soon thereafter as practicable, upon new proposals to be called for, considered and awarded in the manner provided for in section three of this act. Seventh. That the contractor give a sufficient bond, running to the State of Washington, which must be approved by the reporter, for the fulfillment of the terms of the contract, in the sum of ten thousand dollars (\$10,000).

**§8687. State's Purchase.** §5. On the publication of each volume of Reports the Supreme Court must purchase for the use of the State, from the publisher to whom the contract is awarded, three hundred (300) copies of said volume at the price named in the contract, and deliver the same to the Librarian of the state library, who shall distribute same as required by law, and the remaining copies, if any there be, shall be deposited in the state library.

**AN ACT relating to the publications of the decisions of the supreme court reports.** Approved March 14, 1919. L '19 ch 117.

**§8687-1. Advance Sheets Indexed.** §1. The publisher of the decisions of the supreme court of the State of Washington is hereby authorized to publish with each issue of the advance sheets a subject index thereof, to be prepared by the reporter of the court.

**§8687-2. Price Raised:** §2. The publishers, for such additional service, may charge not to exceed four dollars per annum for such advance sheets, and may continue to charge, for the remainder of the period of its present contract, with the state, one dollar and seventy-five cents per volume for the bound volume of reports, and may charge for the bound volume and the advance sheets not to exceed two dollars and twenty-five cents per volume.

**§8687-3. Binding.** §3. The decisions may be bound in buckram instead of sheep but the publishers shall furnish to subscribers desiring sheep bind-

**AN ACT relating to the publication of the decision of the Supreme Court.** L. '21 ch. 162.

**§8687-4. Price Raised.** §1. The chief justice and reporter of the supreme court are hereby authorized to modify the contract between the State of Washington and Bancroft-Whitney Company, publishers, entered into July 13, 1915, for the publication of the reports of the supreme court of Washington, to permit said publishers to charge not to exceed two dollars and twenty-five cents (\$2.25) per volume for the bound volume of reports, and two dollars and seventy-five cents (\$2.75) per volume for the bound volume and the advance sheets, for the period of two years after the taking effect of this act: Provided, That there shall be no increase in the price of the volumes furnished to the state under said contract.

ru1 §268.  
Pledging securities §304.  
Fraud regarding assets — mutilating books, etc. §306.  
Blanket penalty for any violation of banking law §320.  
Deposits, claiming guarantee falsely §345.  
Deposits, receiving when insolvent §331.

CEMETERIES §8776.  
CHARCOAL §9131-9.  
Chiropody, violating act §636.  
Cigarettes, sale, etc.—to minors §636a.  
CIVIL RIGHTS §8781.  
COMPOUNDING CRIMES §8782.  
Common carrier respecting bills lading §471.  
CONSPIRACY §8783.



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form, the opinions of the Supreme Court, with appropriate head notes, and table of cases; and sell the same to the subscribers to the Washington Reports at the price fixed in the proposals; and also, shall agree to mail without cost, a copy of each weekly issue, to each supreme judge, the reporter and attorney general, and to each judge of the superior court and prosecuting attorney of each county in this state, six copies to the state library, and six copies to the law department of the state university. Sixth. The contract shall further provide that the manufacture of the volumes shall be done to the entire satisfaction of the Chief Justice of the Supreme Court and the reporter, and that in case of wilfull failure or refusal on the part of the publisher to comply with the terms of the contract, the reporter may, with the approval of the Chief Justice, declare the same forfeited and void, by the giving of written notice to the publisher to that effect, and the Chief Justice and reporter shall re-let the contract for the remainder of the unexpired term of the contract, as soon thereafter as practicable, upon new proposals to be called for, considered and awarded in the manner provided for in section three of this act. Seventh. That the contractor give a sufficient bond, running to the State of Washington, which must be approved by the reporter, for the fulfillment of the terms of the contract, in the sum of ten thousand dollars (\$10,000).

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**§8687-3. Binding.** §3. The decisions may be bound in buckram instead of sheep but the publishers shall furnish to subscribers desiring sheep binding the volumes so bound at a cost not to exceed twenty-five cents additional per volume.

## CRIMES

**ALL, GENERAL PROVISIONS §8688.**

**ABORTION §8740.**

**ANARCHY §8745.**

**Animals, cruelty, prevention of—transportation, etc. §1960.**

**ARSON §8752.**

**ASSAULT §8758.**

**Auctioneers required to keep records §193.**

**Automobile operating as common carrier without bond §238.**

**Bakeries violating law §250.**

**BANKS §9131-1.**

**"Bank" or "trust," use of name unlawful §268.**

**Pledging securities §304.**

**Fraud regarding assets — mutilating books, etc. §306.**

**Blanket penalty for any violation of banking law §320.**

**Deposits, claiming guarantee falsely §345.**

**Deposits, receiving when insolvent §331.**

**Blanket penalty for violation of savings bank act §405.**

**Barbers violating law §427.**

**BARRATRY §8763.**

**BEVERAGE RECEPTACLES §9131-3.**

**BIGAMY, ETC. §§8765, 9131-6.**

**Bills lading, respecting §471.**

**Blacklisting employees §3445.**

**Bonds by surety companies §§493, 3120, 4542.**

**BRIBERY, ETC. §9047.**

**BRIDGES §9131-8.**

**BURGLARY §8771.**

**CEMETERIES §8776.**

**CHARCOAL §9131-9.**

**Chiropody, violating act §636.**

**Cigarettes, sale, etc.—to minors §636a.**

**CIVIL RIGHTS §8781.**

**COMPOUNDING CRIMES §8782.**

**Common carrier respecting bills lading §471.**

**CONSPIRACY §8783.**



**CONTEMPTS** §8786.  
**COUNTERFEITING, ETC.** §§8787, 9131-11.  
**CRUELTY TO ANIMALS** §9131-12.  
 Dead bodies, tampering with or failing to report, etc., to coroner §1759.  
 Deficiencies by state officers, etc., §6571.  
 Dentists, practice without license, §1940.  
 Drugs, sale of §4462.  
**DRUNKENNESS ETC.** §8797.  
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**ELECTIONS** §§2190, 9131-19.  
     Primary §2252.  
**ELECTRIC APPLIANCES** §9131-29.  
**EMBEZZLEMENT, ETC.** §8811.  
**ESCAPES** §8814.  
**ESTRAYS** §9131-32.  
**EXTORTION** §8823.  
**FAMILY, AGAINST** §8823.  
     Children, employment as messengers §3443.  
     Permitting delinquency §609.  
**FIREARMS AND WEAPONS** §8835.  
**FIRES** §§8840, 9131-37.  
**FISH** §9131-45.  
**FLAG** §8847.  
**FOOD, ETC.** §8848.  
**FORCIBLE ENTRY AND DETAINER** §8858.  
 Forest fires, etc., §§2565, 2568, 2571, et seq.  
 Food laws, adulteration, §2544; adulterated milk §2549; egg classification, etc. §2555.  
**FORGERY** §8859.  
**FRAUDS** §8867.  
**GAMBLING** §§8926, 9131-47.  
**GRAND JURY** §8938.  
 Hotel, etc., fraud on §§2809, 2812.  
**INDIANS** §9131-55.  
 Insurance, embezzlement by agent §2954; frauds, etc., by companies and officers §2958; by insured §2965.  
**IRRIGATION APPLIANCES** §§7243, 9131-56.  
 Irrigation law §3336.  
**KIDNAPING** §8941.  
**LARCENY** §§8944, 9131-58.  
     Automobile taking or riding §240.  
**LIBEL AND SLANDER** §8953.

**LOTTERIES** §8965.  
**MALICIOUS MISCHIEF** §§8970, 9131-61.  
**MALICIOUS PROSECUTION** §8991.  
**MARRIAGE** §9131-64.  
     Solemnizing unlawful §3722; defective persons §3724.  
**MAYHEM** §8992.  
 Mines, salting, etc. §3821.  
**MORALITY, ETC.** §9107.  
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## ALL, GENERAL PROVISIONS.

**AN ACT** relating to crimes and punishments and the rights and custody of persons accused or convicted of crime; and repealing certain acts. Approved March 22, 1909. Laws '09 p 890.

### CHAPTER 1. — General Provisions.

**§8688. Felonies and Misdemeanors Defined.** §1. A crime is an act or omission forbidden by law and punishable upon conviction by death, imprisonment, fine or other penal discipline. Every crime which may be punished by death or by imprisonment in the state penitentiary is a felony. Every crime punishable by a fine of not more than two hundred and fifty dollars, or by imprisonment in a county jail for not more than ninety days, is a misdemeanor. Every other crime is a gross misdemeanor. N. Y. P. C. §3; Minn. C. '05 §4747.

Title sufficient to cover existing law of procedure — jeopardy, State v. George 84 W. 113.

Title of criminal code 1909 includes different method of proof than formerly obtained, State v. Blaine 64 W. 122.

Criminal code saves prior laws as to prior crimes, State v. Morrow 63 W. 297.

"Crime," "offence" are breaches of law for public protection 42 Minn. 147, 43 N. W. 845.

"Offense" not same as "act" 26 Minn.

507, 517; 5 N. W. 959. "Offense" includes all violations of law—ordinances 34 Minn. 1, 24 N. W. 458; 42 Minn. 258, 44 N. W. 115; not military code 74 Minn. 518, 77 N. W. 424.

"Offences" not felonies are misdemeanors 39 Minn. 153, 39 N. W. 305; same act may be punished under both law and ordinance 21 Minn. 202; 26 Minn. 507, 5 N. W. 959; 50 Minn. 128, 52 N. W. 387; 16 Minn. 474, Gil. 426; 36 Minn. 62, 30 N. W. 305; 42 Minn. 147, 43 N. W. 845; 77 Minn. 540, 80

N. W. 701; 84 Minn. 367, 87 N. W. 916. Conviction under ordinance is not bar 29 Minn. 445, 13 N. W. 913; 50 Minn. 128, 52 N. W. 387.

Same act may be punished under federal and state law 29 Minn. 445, 13 N. W. 913; 26 Minn. 507, 5 N. W. 959.

Same act may be different offences—no merger 10 Minn. 407, Gil. 325; under different statutes 69 Minn. 423, 72 N. W. 700.

Minnesota code is the measure of criminal law—no common law offenses 38 Minn. 368, 37 N. W. 587; 39 Minn. 153, 39 N. W. 305; 71 Minn. 28, 73 N. W. 626; but common law applies to definition of words if there is doubt 5 Minn. 19, Gil. 6; courts should further the doing away with the technicalities of the common law 2 Minn. 124, Gil. 99; 5 Minn. 19, Gil. 6; 38 Minn. 368, 37 N. W. 587.

As at the common law an officer may make arrests for felony without a warrant, State v. Symes 20 W. 485.

Convict serving sentence may be tried for crime committed before sentence and given another term after the first expires, Clifford v. Dryden 31 W. 545.

Penal statute repealed without saving clause pending prosecutions fall, Leschl v. Territory 1 W. T. 14; Corbett v. Territory 1 W. T. 431.

Superior courts have concurrent jurisdiction with municipal courts over misdemeanors in cities, State v. Considine 16 W. 358.

Violation of town ordinance made a misdemeanor and prosecuted in name of the state upheld, State v. Fountain 14 W. 236. 135 §3.

**§8689. Persons Punishable. §2.** The following persons are liable to punishment:

1. A person who commits in the state any crime, in whole or in part.
2. A person who commits out of the state any act which, if committed within it, would be larceny, and is afterward found in the state with any of the stolen property.
3. A person who, being out of the state, counsels, causes, procures, aids or abets another to commit a crime in this state.
4. A person who, being out of the state, abducts or kidnaps, by force or fraud, any person, contrary to the laws of the place where the act is committed, and brings, sends or conveys such person into this state.
5. A person who commits an act without the state which affects persons or property within the state, or the public health, morals or decency of the state, which, if committed within the state, would be a crime. N.Y.P.C. §16; Minn. C. '05 §4750. Persons punishable, §9393.

**§8690. Duress of Married Woman. §3.** It is no defense for a married woman charged with the commission of a crime, that the alleged act committed by her was committed in the presence of her husband. N.Y.P.C. §24; Minn. C. '05 §4752.

**§8691. Duress as a Defense. §4.** Whenever any crime, except murder, is committed or participated in by two or more persons, any one of whom participates only under compulsion by another engaged therein, who by threats creates a reasonable apprehension in the mind of such participator that in case of refusal he is liable to instant death or grievous bodily harm, such threats and apprehension constitute duress which will excuse such participator from criminal prosecution. Minn. C. '05 §4753.

Confederate in lesser crime convicted is not a defense in a prosecution for the of greater crime, State v. Moretti, 66 W. 537. murder of the person robbed, State v. Moretti, 66 W. 537.

Participation in a robbery under duress

**§8692. Responsibility of Children. §5.** Children under the age of eight years are incapable of committing crime. Children of eight and under twelve years of age are presumed to be incapable of committing crime, but this presumption may be removed by proof that they have sufficient capacity to understand the act or neglect, and to know that it was wrong. Whenever in legal proceedings it becomes necessary to determine the age of a child, he may be produced for inspection, to enable the court or jury to determine the age thereby; and the court may also direct his examination by one or more physicians whose opinion shall be competent evidence upon the question of his age. N.Y.P.C. §§18, 19. Minn. C. '05 §4754.

Child over 12 years presumed capable of crime, 53 Minn. 541, 55 N. W. 741; and is liable 86 Minn. 224, 90 N. W. 360, 1133.

**§8693. Intoxication No Defense. §6.** No act committed by a person while in a state of voluntary intoxication shall be deemed less criminal by reason of his condition, but whenever the actual existence of any particular purpose, motive or intent is a necessary element to constitute a particular species or degree of crime, the fact of his intoxication may be taken into consideration



in determining such purpose, motive or intent. N.Y.P.C. §22; Minn. C.'05 §4755.

**Intoxication no defense to certain offenses—intent presumed,** 11 Minn. 154, Gil. 95, 21 Minn. 22; 29 Minn. 221, 13 N. W. 140; 93 Minn. 38, 100 N. W. 638. In graver offences where "intent" necessary it is admissible as assault with intent to do great bodily harm, 11 Minn. 154 Gil. 95; 28 Minn. 426, 10 N. W. 472; 29 Minn. 221, 13 N. W. 140; 25 Minn. 161; larceny 21 Minn. 22; murder 13 Minn. 341, Gil. 315; 29 Minn. 221, 13 N. W. 140. Degree of intoxication necessary, 11 Minn. 154, Gil. 95; 13 Minn. 341, Gil. 315; 25 Minn. 161.

**§8694. Insanity, Idiocy, etc., No Defense.** §7. It shall be no defense to a person charged with the commission of a crime, that at the time of its commission, he was unable by reason of his insanity, idiocy or imbecility to comprehend the nature and quality of the act committed, or to understand that it was wrong; or that he was afflicted with a morbid propensity to commit prohibited acts; nor shall any testimony or other proof thereof be admitted in evidence. N.Y.P.C. §§21-3. burg 60 W. 106.

**Act relating to criminal insane, §9293; insane prisoners, §8718.** Partial insanity as defense—non-expert witnesses—burden of proof, State v. Craig 52 W. 66.

**Section unconstitutional, State v. Stras-**

**§8695. Principal Defined.** §8. Every person concerned in the commission of a felony, gross misdemeanor or misdemeanor, whether he directly commits the act constituting the offense, or aids or abets in its commission, and whether present or absent; and every person who directly or indirectly counsels, encourages, hires, commands, induces or otherwise procures another to commit a felony, gross misdemeanor or misdemeanor, is a principal, and shall be proceeded against and punished as such. The fact that the person aided, abetted, counseled, encouraged, hired, commanded, induced or procured, could not or did not entertain a criminal intent, shall not be a defense to any person aiding, abetting, counseling, encouraging, hiring, commanding, inducing or procuring him. N.Y.P.C. §§28-9; Minn. C.'05 §4758.

**Law not repealed, §9132.**

"Assenting" to act is not within the statute, State v. Peasley 80 W. 99.

Does not apply to receiving deposits after insolvency, State v. Furth 82 W. 665

Overt act or assent by accessory in crime of larceny, State v. Klein 54 W. 212

Principals and accessories the same 37

Minn. 493, 35 N. W. 373; 61 Minn. 467, 63 N. W. 1096; 84 Minn. 357, 87 N. W. 935; 85 Minn. 19, 88 N. W. 22; accessory at the common law 17 Minn. 241, Gil. 218; 17 Minn. 76, Gil. 54; 40 Minn. 55, 41 N. W. 299. Bribe giver is not accessory of bribe taker 71 Minn. 28, 73 N. W. 626.

**§8696. Accessory Defined.** §9. Every person not standing in the relation of husband or wife, brother or sister, parent or grandparent, child or grandchild, to the offender, who after the commission of a felony shall harbor, conceal or aid such offender with intent that he may avoid or escape from arrest, trial, conviction or punishment, having knowledge that such offender has committed a felony or is liable to arrest, is an accessory to the felony. N.Y.P.C. §30; Minn. C.'05 §4759.

**Accessories, former act not repealed §9133.**

Particularity of indictment of accessory

after the fact 88 Minn. 175, 92 N. W. 965.

Abettor of manslaughter is principal—charge of physician withholding food held insufficient, State v. McFadden 48 W. 259.

**§8697. Punishment of Accessories.** §10. Every accessory to a felony may be indicted, tried and convicted either in the county where he became an accessory, or where the principal felony was committed; and whether the principal offender has or has not been convicted, or is or is not amenable to justice, or has been pardoned or otherwise discharged after conviction; and, except where a different punishment is specially provided by law, such accessory shall be punished by imprisonment in the state penitentiary for not more than five years, or by a fine of not more than one thousand dollars, or by both. N.Y.P.C. §32; Minn. C.'05 §4760.

**§8698. Conviction of Lesser Crime.** §11. Upon the trial of an indictment or information, the defendant may be convicted of the crime charged therein, or of a lesser degree of the same crime, or of an attempt to commit the crime so charged, or of an attempt to commit a lesser degree of the same crime. Whenever the jury shall find a verdict of guilty against a person so charged, they shall in their verdict specify the degree or attempt of which the accused is guilty. N.Y.P.C. §35; Minn. C.'05 §4757.

Verdict for included offense, §9384.

Assault with weapon, State v. Copeland, 66 W. 244.

Greater offense may be shown than that charged, State v. Hatch, 63 W. 617.

Assaults not included in manslaughter, State v. Phillips, 65 W. 324.

Instructions on lesser offense properly refused in murder in first degree, State

v. Pepoon, 62 W. 635.

Jury may find any degree, §9383.

Verdict of "guilty" means guilty as charged, lesser degree must be specified 3 Minn. 427 Gil. 313; 8 Minn. 220 Gil. 190.

The evidence must support conviction of lesser offense, State v. Kruger 60 W. 542.

Cited 76 W. 586.

**§8699. Attempts. §12.** An act done with intent to commit a crime, and tending but failing to accomplish it, is an attempt to commit that crime; and every person who attempts to commit a crime, unless otherwise prescribed by statute, shall be punished as follows:

1. If the crime attempted is punishable by death or life imprisonment, the person convicted of the attempt shall be punished by imprisonment in the state penitentiary for not more than twenty years.

2. In every other case he shall be punished by imprisonment in such manner as may be prescribed for the commission of the completed offense, for not more than half the longest term, or by a fine of not more than half the largest sum, prescribed upon conviction for the commission of the offense attempted, or by both such fine and imprisonment; but nothing herein shall protect a person who, in an unsuccessful attempt to commit one crime, does commit another and different one, from the punishment prescribed for the crime actually committed; and a person may be convicted of an attempt to commit a crime, although it appears on the trial that the crime was consummated, unless the court in its discretion shall discharge the jury and direct the defendant to be tried for the crime itself. N.Y.P.C. §34; Minn. C.'05 §4771.

Attempts to suborn perjury, §9042; arson, §8757; train robbery, §8971; cruelty to animals, §1965.

Attempted train robbery, §8971.

Arson, 8757.

Presuasion, etc., is sufficient charge in attempted abduction of female under 18, State v. Richards 88 W. 160.

Information charging attempt must charge specific acts, etc., State v. George 79 W. 262.

Sentence of 5 to 7 years for attempted burglary sustained, State v. Mallahan, 65 W. 287.

Charge of attempt to commit burglary

"having in his possession" certain implements is good, State v. Williams 43 W. 505.

Previous attempt may be shown to determine intent in second attempt at sodomy, State v. Peace 5 W. 773.

Person charged with consummated offense may be found guilty of attempt, State v. Remans 21 W. 284.

Solicitation to commit adultery is not a crime, State v. Butler 8 W. 194.

Abandonment of attempt will not avail defendant informed against, State v. McGilvery 20 W. 240.

"Attempt" and "intent" distinguished, State v. Garbe 34 W. 397.

**§8700. Punishment of Felony When Not Fixed. §13.** Every person convicted of a felony for which no punishment is specially prescribed by any statutory provision in force at the time of conviction and sentence, shall be punished by imprisonment in the state penitentiary for not more than ten years, or by a fine of not more than five thousand dollars, or by both. Minn. C. '05. §4762.

**§8701. Punishment of Misdemeanor When Not Fixed. §14.** Every person convicted of a misdemeanor for which no punishment is prescribed by any statute in force at the time of conviction and sentence, shall be punished by imprisonment in the county jail for not more than ninety days, or by a fine of not more than two hundred and fifty dollars. Minn. C. '05 § 4763.

Later act providing for punishment by ordinance sustained, Seattle v. Oliver 78 W. 586.

City ordinance providing minimum punishment of \$20 is valid, Seattle v. Chin Let

19 W. 38.

This section does not apply to ordinances but fixes limitation and jury is not allowed for petty offenses, State ex rel. Belt v. Kennan 25 W. 621.

**§8702. Punishment of Gross Misdemeanor When Not Fixed. §15.** Every person convicted of a gross misdemeanor for which no punishment is prescribed in any statute in force at the time of conviction and sentence, shall be punished by imprisonment in the county jail for not more than one year, or by a fine of not more than one thousand dollars, or by both. Minn. C. 05 §4764.

"Punishment as hereinafter provided" in statute and no punishment provided, above section applied, State v. Deer 80 W. 92.

Cumulative penalty for violation five-cent fare statute held void, State v. Crawford 74 W. 248.



**§8703. Failure of Duty by Public Officer.** §16. Whenever any duty is enjoined by law upon any public officer or other person holding any public trust or employment, their wilfull neglect to perform such duty, except where otherwise specially provided for, shall be a misdemeanor. Minn. C. '05 §4796.

**§8704. Prohibited Acts Misdemeanors.** §17. Whenever the performance of any act is prohibited by any statute, and no penalty for the violation of such statute is imposed, the committing of such act shall be a misdemeanor. Minn. C. '05 §4859.

**§8705. Acts Punishable Under Foreign Law.** §18. An act or omission punishable as a crime in this state is not less so because it is also punishable under the laws of another state, government or country, unless the contrary is expressly declared in the law relating thereto. Minn. C. '05 4766.

**§8706. Foreign Conviction or Acquittal.** §19. Whenever, upon the trial of any person for a crime, it appears that the offense was committed in another state or country, under such circumstances that the courts of this state had jurisdiction thereof, and that the defendant has already been acquitted or convicted upon the merits, upon a criminal prosecution under the laws of such state or country, founded upon the act or omission with respect to which he is upon trial, such former acquittal or conviction is a sufficient defense. Minn. C. '05 §4767.

Acquittal in this state a bar, §9166.

**§8707. Conviction or Acquittal in Other County.** §20. Whenever, upon the trial of any person for a crime, it shall appear that the defendant has already been acquitted or convicted upon the merits, of the same crime, in a court having jurisdiction of such offense in another county of this state, such former acquittal or conviction is a sufficient defense.

**§8708. Punishment for Contempt.** §21. A criminal act which at the same time constitutes contempt of court, and has been punished as such, may also be punished as a crime, but in such case the punishment for contempt may be considered in mitigation. Minn. C. '05 §4768.

Criminal contempts, §8786.

**§8709. Sending Letter, When Complete.** §22. Whenever any statute makes the sending of a letter criminal, the offense shall be deemed complete from the time it is deposited in any postoffice or other place, or delivered to any person, with intent that it shall be forwarded; and the sender may be proceeded against in the county wherein it was so deposited or delivered, or in which it was received by the person to whom it was addressed. Minn. C. '05 §4769.

**§8710. Omission, When Not Punishable.** §23. No person shall be punished for an omission to perform an act when such act has been performed by another acting in his behalf, and competent to perform it. Minn. C. '05 §4770.

**§8711. Commitment to Washington State Training School.** §24. Whenever any boy between the ages of eight and sixteen years, or any girl between the ages of eight and eighteen years, shall be found guilty of any crime, except murder or manslaughter, the court may, in its discretion, order such person committed to the Washington State Training School to remain, in case of a boy, until he shall arrive at the age of eighteen years and, in case of a girl, until she shall arrive at the age of nineteen years, unless sooner paroled or legally discharged.

State training school, commitment, etc. §6761; reformatory, §6748; school truants, §§4843, 8711; for girls §6769. §5246.

Commitment to state training school

**§8712. Washington State Reformatory.** §25. Whenever any male person, between the ages of sixteen and thirty years, never before convicted in this state or elsewhere of any crime which under the laws of this state would amount to a felony, shall be convicted of any felony except murder, arson in the first degree, or robbery, the court may in its discretion order such person to be committed to and confined in the Washington State Reformatory.

State reformatory created—commitment, etc. §6739.

Judgment valid though age was less than 16 where court found person was over 16 and no appeal was taken, *Pellessier v. Reed* 75 W. 201.

The above section supersedes act at §6739 in so far as it conflicts, *Pellessier v. Reed* 75 W. 201.

**§8713. Transfer of Prisoners From One Institution to Another. §26.** Whenever in their judgment, the welfare of any prisoner or prisoners confined in any penal institution shall require that any prisoner be removed from one institution to another, the board having control of such institution shall have authority to order such removal.

Removal from reformatory to penitentiary sustained, *Pellessier v. Reed* 75 W. 201. Transfer of insane, §8719; transportation, §6639.

**§8714. Working Prisoners. §27.** The sheriff of each county shall employ all male persons sentenced to imprisonment in the county jail thereof in such manner and at such places within the county, as may be directed by the board of county commissioners of such county.

City and county prisoners put to work §§9320, 9334, 1674.

**§8715. Suspending Sentences. §28.** Whenever any person under the age of twenty-one years shall be convicted of any crime except murder, burglary, arson, or rape, the court may in its discretion, at the time of imposing sentence upon such person, direct that such sentence be stayed and suspended until otherwise ordered by such court, and that the sentenced person be placed under the charge of a parol or peace officer during the term of such suspension, upon such terms as the court may determine. In no case shall a sentence be suspended under the provisions of this section unless the prisoner if sentenced to confinement in a penal institution be placed under the charge of a parol officer, who is a duly appointed and acting officer of the institution to which the person is sentenced. L. '21 ch. 69.

**§8715. Suspending Sentences. §28.** Whenever any person never before convicted of a felony or gross misdemeanor shall be convicted of any crime except murder, burglary in the first degree, arson in the first degree, robbery, carnal knowledge of a female child under the age of ten years, or rape, the court may in its discretion, at the time of imposing sentence upon such person, direct that such sentence be stayed and suspended until otherwise ordered by such court, and that the sentenced person be placed under the charge of a parol or peace officer during the term of such suspension, upon such terms as the court may determine. In no case shall a sentence be suspended under the provisions of this section unless the prisoner if sentenced to confinement in a penal institution be placed under the charge of a parol officer, who is a duly appointed and acting officer of the institution to which the person is sentenced. L. '21 ch. 69.

same in his discretion at not less than six months nor more than five years; and where no maximum term of imprisonment is prescribed by law, the court shall fix such maximum term of imprisonment.

Maximum and minimum sentence should be imposed. *State v. Clark* 98 W. 81.

Sentence of 5 to 7 years for attempted burglary sustained, *State v. Mallahan*, 65 W. 287.

Indeterminate sentence act '07 repealed §8739.

Sentence in excess of five years valid for five years—habeas corpus will not lie before five years, *In re Blystone* 75 W. 286.

Court exceeded its power in fixing a minimum term of 10 years for possessing a forged instrument with intent to utter, *State v. Andrews*, 71 W.

**§8717. Period of Imprisonment. §30.** The state board of control acting in conjunction with the warden of the state penitentiary, or the board of managers of the Washington state reformatory, acting in conjunction with the superintendent of such reformatory, as the case may be, may at any time after the expiration of the minimum term of imprisonment for which such prisoner was committed thereto, direct that any prisoner confined in such institution shall be released on parole upon such terms and conditions as in their judgment they may prescribe in each case.

Pardons, §9333; commutations, §§4378, §6753.

4391; paroles, §4394; from reformatory, Cited 75 W. 201.

**§8718. Insane Prisoners. §31.** Whenever, in the judgment of the court trying the same, any person convicted of a crime shall have been at the time of its commission unable by reason of his insanity, idiocy or imbecility to comprehend the nature and quality of his act, or to understand that it was wrong, or shall be at the time of his conviction or sentence insane or an idiot or imbecile, such court may in its discretion direct that such person be confined for treatment in one of the state hospitals for the insane or in the insane ward of the state penitentiary, until such person shall have recovered his sanity. In determining whether any person convicted of a crime was at the



**§8703. Failure of Duty by Public Officer.** §16. Whenever any duty is enjoined by law upon any public officer or other person holding any public trust or employment, their wilfull neglect to perform such duty, except where otherwise specially provided for, shall be a misdemeanor. Minn. C. '05 §4796.

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from the time it is deposited in any postoffice or other place, or delivered to any person, with intent that it shall be forwarded; and the sender may be proceeded against in the county wherein it was so deposited or delivered, or in which it was received by the person to whom it was addressed. Minn. C. '05 §4769.

**§8710. Omission, When Not Punishable.** §23. No person shall be punished for an omission to perform an act when such act has been performed by another acting in his behalf, and competent to perform it. Minn. C.'05 §4770.

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Authorizes the court to suspend sentence upon a plea of guilty, and to commit the defendant thereafter, *State v. Mallahan*, 65 W. 287.

Court cannot suspend sentence on adult pleading guilty, *State ex Lundin v. Court* 102 W. 600.

§8716. Indeterminate Sentences. §29. Whenever any person shall be convicted of any felony for which no fixed period of confinement is imposed by law, the court shall, in addition to any fine or forfeiture which he may impose, direct that such person be confined in the state penitentiary, or in the Washington State Reformatory, as the case may be, for a term not less than the minimum nor greater than the maximum term of imprisonment prescribed by law for the offense of which such person shall be convicted; and where no minimum term of imprisonment is prescribed by law, the court shall fix the same in his discretion at not less than six months nor more than five years; and where no maximum term of imprisonment is prescribed by law, the court shall fix such maximum term of imprisonment.

Maximum and minimum sentence should be imposed. *State v. Clark* 98 W. 81.

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§8717. Period of Imprisonment. §30. The state board of control acting in conjunction with the warden of the state penitentiary, or the board of managers of the Washington state reformatory, acting in conjunction with the superintendent of such reformatory, as the case may be, may at any time after the expiration of the minimum term of imprisonment for which such prisoner was committed thereto, direct that any prisoner confined in such institution shall be released on parole upon such terms and conditions as in their judgment they may prescribe in each case.

Pardons, §9333; commutations, §§4378, §6753.

4391; paroles, §4394; from reformatory, Cited 75 W. 201.

§8718. Insane Prisoners. §31. Whenever, in the judgment of the court trying the same, any person convicted of a crime shall have been at the time of its commission unable by reason of his insanity, idiocy or imbecility to comprehend the nature and quality of his act, or to understand that it was wrong, or shall be at the time of his conviction or sentence insane or an idiot or imbecile, such court may in its discretion direct that such person be confined for treatment in one of the state hospitals for the insane or in the insane ward of the state penitentiary, until such person shall have recovered his sanity. In determining whether any person convicted of a crime was at the



time of the commission thereof unable by reason of his insanity, idiocy or imbecility to comprehend the nature and quality of his act, or to understand that it was wrong, or is at the time of his conviction or sentence insane or an idiot or imbecile, the court may take counsel with one or more experts in the diagnosis and treatment of insanity, idiocy and imbecility, and may make such personal or other examination of the defendant as in his judgment may be necessary to aid in the determination.

Act relating to criminal insane, §9293; times if defendant becomes insane, State insane acquitted and unsafe to be at large v. Wilson, 69 W. 235.

§9387.

No trial provided therefore unconstitutional, State v. Strasburg 60 W. 106.

**§8719. Removal of Insane.** §32. Whenever in the judgment of the state board of control the welfare of any person confined in any penal institution, or in any institution for the care of the insane, shall require that he be removed for treatment or confinement to another institution for the care of the insane, or to the insane ward of the state penitentiary, they shall be authorized to order such removal, but whenever a change is made in the location of any such inmate, a record open to the public shall be made and the relatives of such inmate shall be notified of the change.

Removal generally, §8713.

**§8720. Two or More Convictions.** §33. Whenever a person shall be convicted of two or more offenses before sentence has been pronounced for either, the imprisonment to which he is sentenced upon the second or other subsequent conviction shall commence at the termination of the first or other prior term or terms of imprisonment to which he is sentenced; and whenever a person while under sentence of felony shall commit another felony and be sentenced to another term of imprisonment, such latter term shall not begin until the expiration of all prior terms.

**§8721. Habitual Criminals.** §34. Every person convicted in this state of any crime of which fraud or intent to defraud is an element, or of petit larceny, or of any felony, who shall previously have been convicted, whether in this state or elsewhere, of any crime which under the laws of this state would amount to a felony, or who shall previously have been twice convicted, whether in this state or elsewhere, of petit larceny, or of any misdemeanor or gross misdemeanor of which fraud or intent to defraud is an element, shall be adjudged to be an habitual criminal and shall be punished by imprisonment in the state penitentiary for not less than ten years.

Every person convicted in this state of any crime of which fraud or intent to defraud is an element, or of petit larceny, or of any felony, who shall previously have been twice convicted, whether in this state or elsewhere, of any crime which under the laws of this state would amount to a felony, or who shall previously have been four times convicted, whether in this state or elsewhere, of petit larceny, or of any misdemeanor or gross misdemeanor of which fraud or intent to defraud is an element, shall be punished by imprisonment in the state penitentiary for life.

Above section repealed L. '03 125 relating to second conviction, State v. Cotz 94 W. 163.

Second, etc., conviction liquor laws §3194.

Conviction second and third time, §9221.

Charge in language of statute good—section repeals former statute, State v. Cotz 94 W. 163.

Supersedes earlier act on subject—time of trial, State v. Gustafson 87 W. 613.

Information need not allege former convictions had not been annulled—two convictions alleged, three may be proved—proof by record of another state, State v. Rowan 84 W. 158.

Habitual criminal need not be tried within five days, L. '03 125, State v. Alexander 65 W. 488.

Indeterminate sentence act does not repeal this act, State v. Miller 78 W. 268.

Act L. '07 341 did not repeal habitual criminal act, State v. Miller 78 W. 268.

Act valid being only an increase of punishment—evidence, State v. Le Pitre 54 W. 166.

Cases could be tried under L. '13 125 by different judges, either may pass judgment, State v. Driscoll 86 W. 245.

**§8722. Prevention of Procreation.** §35. Whenever any person shall be adjudged guilty of carnal abuse of a female person under the age of ten years, or of rape, or shall be adjudged to be an habitual criminal, the court may, in addition to such other punishment or confinement as may be imposed, direct an operation to be performed upon such person, for the prevention of procreation. Vasectomy not an unconstitutional punishment, State v. Fellen, 70 W. 65.

**§8723. Convicts Protected—Forfeitures Abolished.** §36. Every person sentenced to imprisonment in any penal institution shall be under the protection of the law, and any unauthorized injury to his person shall be punished in the same manner as if he were not so convicted or sentenced. A conviction of crime shall not work a forfeiture of any property, real or personal, or of any right or interest therein. All forfeitures in the nature of deodands, or in case of suicide or where a person flees from justice, are abolished.

**§8724. Conviction of Public Officer Forfeits Trust.** §37. The conviction of a public officer of any felony or malfeasance in office shall entail, in addition to such other penalty as may be imposed, the forfeiture of his office, and shall disqualify him from ever afterwards holding any public office in this state.

**§8725. Convict as Witness.** §38. Every person convicted of a crime shall be a competent witness in any civil or criminal proceeding, but his conviction may be proved for the purpose of affecting the weight of his testimony, either by the record thereof, or a copy of such record duly authenticated by the legal custodian thereof, or by other competent evidence, or by his cross-examination, upon which he shall answer any proper question relevant to that inquiry, and the party cross-examining shall not be concluded by his answer thereto. Minn. C. '05 §4780.

In civil action criminal conviction for same act admissible, *Marshall v. Dunn* 93 W. 156.

Former conviction of witness may be shown by the testimony of the witness, *State v. Stone*, 66 W. 625.

Title held sufficient, *State v. Blaine*, 64 W. 122.

Court may compel accused on cross-examination to testify to a former conviction where the jury were properly instructed,

*State v. Blaine*, 64 W. 122.

Previous conviction of felony or misdemeanor may be shown on cross-examination of accused, *State v. Overland*, 68 W. 566.

Witness may be asked if he has been convicted and impeached 43 Minn. 196, 45 N. W. 152; but not if indicted 91 Minn. 419, 98 N. W. 334; or arrested 85 Minn. 19, 88 N. W. 22; or as to punishment 77 Minn. 417, 80 N. W. 358.

**§8726. Incriminating Testimony.** §39. In every case where it is provided in this act that a witness shall not be excused from giving testimony tending to criminate himself, no person shall be excused from testifying or producing any papers or documents on the ground that his testimony may tend to criminate or subject him to a penalty or forfeiture; but he shall not be prosecuted or subjected to a penalty or forfeiture for or on account of any action, matter or thing concerning which he shall so testify, except for perjury or offering false evidence committed in such testimony. Minn. C. '05 §4778.

Incriminating testimony required in bribery, etc., §9057; gambling, etc., §9837; criminal anarchy, §8751; abortion, §8743.

**§8727. Intent to Defraud.** §40. Whenever an intent to defraud shall be made an element of an offense, it shall be sufficient if an intent appears to defraud any person, association or body politic or corporate whatsoever. Minn. C. '05 §4781.

Charge of forgery without naming per-

son defrauded sustained, *State v. Thomas* 102 W. 564.

**§8728. Crimes on Railway Trains, Boats, Etc.** §41. The route traversed by any railway car, coach, train or other public conveyance, and the water traversed by any boat shall be criminal districts; and the jurisdiction of all public offenses committed on any such railway car, coach, train, boat or other public conveyance, or at any station or depot upon such route, shall be in any county through which said car, coach, train, boat or other public conveyance may pass during the trip or voyage, or in which the trip or voyage may begin or terminate. Minn. C. '05 §4782.

Constitution provides "jury of the county", Const., art. 1, §22.

Vehicle passing through sufficient 4 Minn. 325 Gil. 241.

**§8729. Prior Offenses.** §42. Nothing contained in any provision of this act shall apply to an offense committed or act done at any time before the day when this act shall take effect. Such an offense shall be punished according to, and such act shall be governed by, the provisions of law existing when it is done or committed, in the same manner as if this act had not been passed.

General saving Act '01, §9198.

laws, *State v. Newcomb* 58 W. 414.

Laws properly continued in force—are not ex post facto laws, *In re Newcomb* 56 W. 395.

Section valid whether actions instituted or not, *State v. Lorenzy* 59 W. 308.

This section sufficient to save former

Saving clause sufficient to continue former laws, *State v. Ware* 58 W. 526.



§8730. **Existing Civil Rights.** §43. Nothing in this act shall be deemed to affect any civil right or remedy existing at the time when it shall take effect, by virtue of the common law or of the provision of any statute.

§8731. **Civil Remedies Preserved.** §44. The omission to specify or affirm in this act any liability to any damages, penalty, forfeiture or other remedy, imposed by law, and allowed to be recovered or enforced in any civil action or proceeding, for any act or omission declared punishable herein, shall not affect any right to recover or enforce the same.

§8732. **Proceedings to Impeach, Etc., Preserved.** §45. The omission to specify or affirm in this act any ground of forfeiture of a public office or other trust or special authority conferred by law, or any power conferred by law to impeach, remove, depose or suspend any public officer or other person holding any trust, appointment or other special authority conferred by law, shall not affect such forfeiture or power, or any proceeding authorized by law to carry into effect such impeachment, removal, deposition or suspension.

§8733. **Rule of Construction.** §46. Every provision of this act shall be construed according to the fair import of its terms.

§8734. **Common Law Supplements Statute.** §47. The provisions of the common law relating to the commission of crime and the punishment thereof, in so far as not inconsistent with the institutions and statutes of this state, shall supplement all penal statutes of this state and all persons offending against the same shall be tried in the superior courts of this state.

Common law supplements civil statutes acquittal of co-conspirators discharges others unless discharge was had to obtain evidence, *Bradshaw v. Territory* 3 W. T. 265.

§8252. Assault with intent to commit sodomy punishable before enactment of §1794, *State v. Peace* 5 W. 773.

An officer may make arrests for felony without a warrant, *State v. Symes* 20 W. 484.

It is not necessary to show terms of common design in conspiracy—the declaration of one is the declaration of all, *State v. McCann* 16 W. 249.

Cited 82 W. 520.

Conspiracy is punishable—dismissal or

§8735. **Act Continuation of Former Acts.** §48. The provisions of this act, in so far as they are substantially the same as existing statutes, shall be construed as continuations thereof and not as new enactments.

§8736. **Act as Measure of Law.** §49. No statute, law or rule is continued in force because it is consistent with the provisions of this act on the same subject; but in all cases provided for by this act, all statutes, laws and rules heretofore in force in this state, whether consistent or not with the provisions of this act, unless expressly continued in force by it, are repealed and abrogated.

Act supersedes former law as to incest, *State v. Bielman* 86 W. 460.

Acts repealed, §8739.

§8737. **Repeal Does Not Revive Former Law.** §50. The repeal or abrogation by this act of any existing law shall not revive any former law heretofore repealed, nor affect any right already existing or accrued or any action or proceeding already taken, except as in this act provided; nor does it repeal any private statute or statute affecting civil rights or liabilities not expressly repealed.

§8738. **Definition of Terms.** §51. In construing the provisions of this act, save when otherwise plainly declared or clearly apparent from the context, the following rules shall be observed:

1. Each of the words "neglect," "negligence," "negligent," and "negligently" shall import a want of such attention to the nature or probable consequences of an act or omission as an ordinarily prudent man usually exercises in his own business.

2. Each of the words "corrupt" and "corruptly" shall import a wrongful desire to acquire or cause some pecuniary or other advantage to himself or another, by the person to whom applicable.

3. "Malice" and "maliciously" shall import an evil intent, wish or design to vex, annoy or injure another person. Malice may be inferred from an act done in wilfull disregard of the rights of another, or an act wrongfully done

without just cause or excuse, or an act or omission of duty betraying a wilfull disregard of social duty.

4. The word "knowingly" imports a knowledge that the facts exist which constitute the act or omission of a crime, and does not require knowledge of its unlawfulness; knowledge of any particular fact may be inferred from the knowledge of such other facts as should put an ordinarily prudent man upon inquiry.

5. Whenever an intent to defraud constitutes a part of a crime, it is not necessary to aver or prove an intent to defraud any particular person.

6. The word "boat" shall include ships, steamers and other structures adapted to navigation or movement from place to place by water.

7. The word "signature" shall include any memorandum, mark, or sign made with intent to authenticate any instrument or writing, or the subscription of any person thereto.

8. The word "writing" shall include printing.

9. The word "property" shall include both real and personal property.

10. The term "real property" shall include every estate, interest and right in lands, tenements and hereditaments, corporeal or incorporeal.

11. The term "personal property" shall include dogs and all domestic animals and birds, water, gas and electricity, all kinds or descriptions of money, chattels and effects, all instruments or writings completed and ready to be delivered or issued by the maker, whether actually delivered or issued or not, by which any claim, privilege, right, obligation or authority, or any right or title to property real or personal, is, or purports to be, or upon the happening of some future event may be evidenced, created, acknowledged, transferred, increased, diminished, encumbered, defeated, discharged or affected, and every right and interest therein.

12. The word "bond" shall include an undertaking.

13. Words in the present tense shall include the future tense; and in the masculine shall include the feminine and neuter genders; and in the singular shall include the plural; and in the plural shall include the singular.

14. The word "person" shall include a corporation or joint stock association; and whenever it is used to designate a party whose property may be the subject of an offense it shall also include the state, or any other state, government or country which may lawfully own property within this state.

15. The term "judge" shall include every judicial officer authorized, alone or with others, to hold or preside over a court of record.

16. Any person shall be deemed an "owner" of any property who has a general or special property in the whole or any part thereof, or lawful possession thereof, either actual or constructive.

17. The words "dwelling house" shall include every building or structure which shall have been usually occupied by a person lodging therein at night, and whenever it shall be so constructed as to consist of two or more parts or rooms occupied or intended to be occupied, whether permanently or temporarily, by different tenants separately by usually lodging therein at night, or for any other separate purpose, each part shall be deemed a separate dwelling house of the tenant occupying the same.

18. The word "building" shall include every house, shed, boat, water craft, railway car, tent or booth, whether completed or not, suitable for affording shelter for any human being, or as a place where any property is or shall be kept for use, sale or deposit.

19. The word "night time" shall include the period between sunset and sunrise; the word "daytime" the period between sunrise and sunset.

20. The word "break," when used in connection with the crime of burglary, shall include:

(a) Breaking or violently detaching any part, internal or external, of a building;

(b) Opening, for the purpose of entering therein, any outer door of a building or of any room, apartment or set of apartments therein separately used and occupied, or any window, shutter, scuttle or other thing used for covering or closing any opening thereto or therein, or which gives passage from one part thereof to another;

(c) Obtaining entrance into such building or apartment by any threat or artifice, used for that purpose, or by collusion with any person therein;



(d) Entering such building, room or apartment by or through any pipe, chimney or other opening, or by excavating or digging through or under a building or the walls or foundation thereof.

21. The word "enter," when constituting an element or part of a crime, shall include the entrance of the offender, or the insertion of any part of his body, or of any instrument or weapon held in his hand and used or intended to be used to threaten or intimidate a person, or to detach or remove property.

22. The term "railway" or "railroad" shall include all railways, railroads and street railways, whether operated by steam, electricity or any other motive power.

23. The words "indicted" and "indictment" shall include "informed against" and "information"; and the words "informed against" and "information" shall include the words "indicted" and "indictment."

24. The words "officer," and "public officer" shall include all assistants, deputies, clerks and employes of any public officer and all persons exercising or assuming to exercise any of the powers or functions of a public officer.

25. The word "juror" shall include a talesman, and extend to jurors in all courts, whether of record or not.

26. The word "prisoner" shall include any person held in custody under process of law, or under lawful arrest.

27. The word "prison" shall mean any place designated by law for the keeping of persons held in custody under process of law, or under lawful arrest.

Charge of forgery without names of persons defrauded sustained State v. Thomas 102 W. 564.

Real property not included in larceny statute, State v. Klinkenberg 76 W. 466.

Trustee in bankruptcy charging bankrupt with petit larceny of goods has defense of probable cause in action of false

imprisonment, Prentiss v. Bogart 84 W. 481.

A bank check is sufficient to support the crime of extortion whether or not the signature thereon is regular, State v. Barr, 67 W. 87.

Conviction of larceny of wheat from railroad cars sustained, State v. Ray, 62 W. 582.

§8739. Acts Repealed. §52. All acts or parts of acts enumerated in the following schedule, and all acts and parts of acts in conflict with the provisions hereof, are hereby repealed.

Schedule of Acts Repealed. Ballinger's Annotated Codes and Statutes of Washington, section 3485, 3486, 3766, 4372, 4376, 6724, 6727 to 6736, inclusive; 6773 to 6776, inclusive; 6866, 6908, 6910 to 6916, inclusive; 6925 to 6927, inclusive; 6945; 7035 to 7071, inclusive; 7073 to 7089, inclusive; 7094 to 7101, inclusive; 7103 to 7116, inclusive; 7118 to 7126, inclusive; 7128 to 7132, inclusive; 7136 to 7142, inclusive; 7144, 7145, 7146a, 7147, 7154, 7155, 7156, 7160, 7165 to 7168, inclusive; 7175, 7176, 7185 to 7231, inclusive; 7233 to 7256, inclusive; 7259, 7260, 7261, 7264, 7265, 7266, 7268, 7269, 7275 to 7286, inclusive; 7288, 7293 to 7296, inclusive; 7298 to 7301, inclusive; 7305, 7306, 7310 to 7317, inclusive; 7322, 7323, 7324, 7334 to 7343, inclusive; 7404, 7405, 7435 to 7440, inclusive; Laws of Washington, 1901, chapters 17, 25, 34, 40, 59, 145, 154; Laws of Washington, 1903, chapters 5, 13, 14, 45, 51, 52, 55, 56, 112, 123, 128, 131, section 1. Laws of Washington, 1905, chapters 24, 33, 42, 49, 77, 98, 158, 179; Laws of Washington, 1907, chapters 35, 39, 103, 128, 148, 155, 169, 170.

## ABORTION.

### Abortion.

§8740. Abortion Defined. §196. Every person who, with intent thereby to produce the miscarriage of a woman, unless the same is necessary to preserve her life or that of the child whereof she is pregnant, shall—

1. Prescribe, supply, or administer to a woman, whether pregnant or not, or advise or cause her to take any medicine, drug or substance; or

2. Use, or cause to be used, any instrument or other means;

Shall be guilty of abortion, and punished by imprisonment in the state penitentiary for not more than five years, or in the county jail for not more than one year. Minn. C. '05 §4942.

Abortion by drugs, §9003.

Manner of use of instruments immaterial—paternity, pregnancy, failure to prosecute father and unchastity not material issues, State v. Russell 90 W. 474.

Charge in language of statute—drugs or instrument not duplicity, State v. Gaul 88 W. 295.

Case reversed for error in excluding evidence of purpose of operation, State v. Pryor, 74 W. 121.

This section defines unlawful act which may be punished as provided in §9000 if death ensues, State v. Power 24 W. 34.

**§8741. — Pregnant Women Attempting.** §197. Every pregnant woman who shall take any medicine, drug or substance, or use or submit to the use of any instrument or other means, with intent thereby to produce her own miscarriage, unless the same is necessary to preserve her life or that of the child whereof she is pregnant, shall be punished by imprisonment in the state penitentiary for not more than five years or by a fine of not more than one thousand dollars. Minn. C. '05 §4943.

**§8742. — Selling Drugs, Etc.** §198. Every person who shall manufacture, sell or give away any instrument, drug, medicine, or other substance, knowing or intending that the same may be unlawfully used in procuring the miscarriage of a woman, shall be guilty of a gross misdemeanor. Minn. C. '05 §4944.

**§8743. — Evidence.** §199. In any prosecution for abortion, attempting abortion, or selling drugs unlawfully, no person shall be excused from testifying as a witness on the ground that said testimony would tend to incriminate himself. Minn. C. '05 §4945.

**§8744. Concealing Birth.** §200. Every person who shall endeavor to conceal the birth of a child by any disposition of its dead body, whether the child died before or after its birth, shall be guilty of a gross misdemeanor. Minn. C. '05 §4946.

## ANARCHY.

**§8745. Criminal Anarchy.** §310. Criminal anarchy is the doctrine that organized government should be overthrown by force or violence, or by assassination of the executive head or of any of the executive officials of government, or by any unlawful means. The advocating of such doctrine either by word of mouth or writing is a felony. N.Y.P.C. §468a.

Information may follow statute and not U. S. 273.

be double, State v. Ilomaki 40 W. 629.

Not invalid because indefinite, State v.

Section valid under restricted construction of state court, Fox v. Washington 236

**§8746. Advocacy of.** §313. [311.] Every person who—

1. By word of mouth or writing shall advocate, advise or teach the duty, necessity or propriety of overthrowing or overturning organized government by force or violence, or by assassination of the executive head or of any of the executive officials of government, or by any unlawful means; or

2. Shall print, publish, edit, issue or knowingly circulate, sell, distribute or publicly display any book, paper, document, or written or printed matter in any form, containing or advocating, advising or teaching the doctrine that organized government should be overthrown by force, violence or any unlawful means; or,

3. Shall openly, wilfully and deliberately justify by word of mouth or writing the assassination or unlawful killing or assaulting of any executive or other officer of the United States or of any state or of any civilized nation having an organized government because of his official character, or any other crime, with intent to teach, spread or advocate the propriety of the doctrines of criminal anarchy; or

4. Shall organize or help to organize or become a member of or voluntarily assemble with any society, group or assembly of persons formed to teach or advocate such doctrine,

Shall be punished by imprisonment in the state penitentiary for not more than ten years, or by a fine of not more than five thousand dollars, or by both.



**§8747. Inciting Breach of Peace.** §312. Every person who shall wilfully print, publish, edit, issue, or knowingly circulate, sell, distribute or display any book, paper, document or written or printed matter, in any form, advocating, encouraging or inciting, or having a tendency to encourage or incite the commission of any crime, breach of the peace or act of violence, or which shall tend to encourage or advocate disrespect for law or for any court or courts of justice, shall be guilty of a gross misdemeanor.

**§8748. — Liability of Editors and Others.** §313. Every editor or proprietor of a book, newspaper or serial and every manager of a partnership or incorporated association by which a book, newspaper or serial is issued, is chargeable with the publication of any matter contained in such book, newspaper or serial. But in every prosecution therefor, the defendant may show in his defense that the matter complained of was published without his knowledge or fault and against his wishes, by another who had no authority from him to make the publication, and was retracted by him as soon as known.

**§8749. Anarchy—Assemblages for.** §314. Whenever two or more persons assemble for the purpose of advocating or teaching the doctrines of criminal anarchy, as defined in section 310 of this act, such an assembly is unlawful, and every person voluntarily participating therein by his presence, aid or instigation, shall be punished by imprisonment in the state penitentiary for not more than ten years, or by a fine of not more than five thousand dollars, or both.

**§8750. — Permitting Premises to Be Used.** §315. Every owner, agent, superintendent, janitor, caretaker or occupant of any place, building or room who shall wilfully and knowingly permit therein any assemblage of persons prohibited by section 314 of this act, or who, after notification that the premises are so used, shall permit such use to be continued, shall be guilty of a gross misdemeanor.

**§8751. Witness' Privilege.** §316. No person shall be excused from giving evidence upon an investigation or prosecution for any of the offenses specified in sections 311 or 314 of this act, upon the ground that the evidence might tend to criminate himself.

## ARSON.

### Arson.

**§8752. Arson—First Degree.** §320. Every person who shall wilfully—  
1. Burn or set on fire in the night-time the dwelling house of another, or any building in which there shall be at the time a human being; or,  
2. Set any fire manifestly dangerous to any human life, shall be guilty of arson in the first degree and be punished by imprisonment in the state penitentiary for not less than five years. N.Y.P.C. §486; Minn. C.'05 §5036.

Fires, §8840; communicated, §9131-111; setting to personal property, §9131-39; forest act, §2568.

Information held specific—evidence of contents of structure, State v. McClain 43 W. 267.

Former statute does not change rule that one spouse cannot testify against the other. State v. Kephart 56 W. 561.

Burning of building is presumed to be by accident or natural causes—defendant must be shown guilty beyond reasonable doubt, State v. Pienick 46 W. 522.

Wife set fire, husband and wife both charged and husband found guilty—con-

spiracy—moving goods out showing motive, State v. Mann 39 W. 144.

Decisions construing former law 1 W. 345.

Place is sufficiently stated if in "county" and ownership by answer of one witness, State v. Myers 9 W. 8.

Description of building as a "storehouse" is good though second story used as lodging house, State v. Biles 6 W. 186.

Charge that lessee is owner is immaterial, id.

Title of act embraces but one subject, State v. Hall 24 W. 255.

**§8753. — Second Degree.** §321. Every person who, under circumstances not amounting to arson in the first degree, shall wilfully burn or set on fire any building, or any structure or erection appurtenant to or adjoin-

ing any building, or any wharf, dock, threshing machine, threshing engine, bridge or trestle, or any hay, grain, crop or timber, whether cut or standing, or any lumber, shingles, or other timber products, shall be guilty of arson in the second degree, and shall be punished by imprisonment in the state penitentiary for not more than ten years, or by a fine of not more than five thousand dollars. N.Y.P.C. §487; Minn. C. '05 §5037.

**§8754. Contiguous Fires.** §322. Whenever any building or structure which may be the subject of arson in either the first or second degree shall be so situated as to be manifestly endangered by any fire and shall subsequently be set on fire thereby, any person participating in setting such fire shall be deemed to have participated in setting such building or structure on fire. Minn. C.'05 §5039.

**§8755. "Set on Fire" Defined.** §323. A building, structure, or any property mentioned in section 321 hereof, shall be deemed "set on fire," whenever any part thereof or anything therein shall be scorched, charred or burned.

**§8756. Ownership of Building.** §324. To constitute arson it shall not be necessary that another person than the defendant should have had ownership in the building or structure set on fire. Minn. C.'05 §5040.

**§8757. Preparation Is Attempt.** §325. Any wilful preparation made by any person with a view to setting fire to any building or structure shall be deemed to be an attempt to commit the crime of arson, and shall be punished as such. Attempts generally, §8699.

## ASSAULT.

### Assault.

**§8758. Assault in First Degree Defined.** §161. Every person who, with intent to kill a human being, or to commit a felony upon the person or property of the one assaulted, or of another—

1. Shall assault another with a firearm or any deadly weapon or by any force or means likely to produce death; or

2. Shall administer to or cause to be taken by another, poison or any other destructive or noxious thing so as to endanger the life of another person, shall be guilty of assault in the first degree and shall be punished by imprisonment in the state penitentiary for not less than five years. N.Y.P.C. §§217, 220; Minn. C. '05 §4903.

Evidence of other crimes to show intent—charge definite—sentence for 9 years error, State v. Clark 98 W. 81.

Retreat must be made to invoke doctrine of self-defense—instruction for third degree properly refused, State v. McConaghy 84 W. 168.

Upon trial for assault in first degree and evidence showed either first or second degree defendant not entitled to instruction on third degree, State v. Hart 79 W. 225.

A conviction of assault in the third degree can be had under an information charging an assault upon a pregnant woman by producing an unnecessary abortion, resulting in her death and that of her unborn child, State v. Hamilton, 69 W. 561.

Evidence held to sustain conviction under former statute—included offense, State v. Crist, 62 W. 326.

Assault with intent to kill, 2 Minn. 124, Gil. 99; 3 Minn. 438, Gil. 325; 4 Minn. 321, Gil. 237; 14 Minn. 35, Gil. 27.

Assault is now defined as at common law, Howell v. Winters 58 W. 436.

Charge of assault with deadly weapon insufficient for assault, State v. Heath 57 W. 246.

Present ability—assault with revolver sustained under the facts, State v. McFadden 42 W. 1.

P. C. 1905 §1575 cited State v. Constantine 48 W. 218.

Charge of assault with deadly weapon and finding of simple assault sustained under the facts, State v. McFadden 42 W. 1.

Offense under following section is not included offense, State v. Snider 32 W. 299.

Information not alleging "present ability" held good, State v. Levan 23 W. 547.

This section does not prevent conviction for attempt under charge of consummated offense, State v. Romans 21 W. 284.

Assault and assault and battery are included offenses, State v. McCormick 20 W. 94.

Information charging assault to commit rape held sufficient, State v. Smith 19 W. 376.

Intent to murder is not presumed from assault with deadly weapon, State v. Dolan 17 W. 499.

Information not following statute, but charged that defendant having present ability attempted to kill, State v. Feamster 12 W. 461.

Crime defined in P. C. 1905, §1576 is included in this section, State v. Keen 10 W. 93.

Quarrels prior to assault may be shown,



State v. Ackles 8 W. 462.

Charge of assault with intent to commit rape must allege present ability, State v. Dunlap 25 W. 292.

Crime defined by next section is not included in this one, State v. Sargent 9 W. 691

Charge held sufficient only for simple assault and sentence accordingly, Watson v. State 2 W. 504.

Instruction on assault with intent to rape and included offense approved, State v. Courtemarch 11 W. 446.

In charge of assault with intent to steal jury cannot be instructed that they may

find robbery, State v. Fenton 30 W. 325.

Information held sufficient, State v. Romano 41 W. 241.

Use of "personal injury" instead of "bodily injury" is not defect, State v. Clayborne 14 W. 622.

Charge of assault "without considerable provocation" "and" wilfully, etc, is not double, State v. John Port Townsend, 7 W. 462.

Assault and assault and battery are included offenses, Clarke v. Territory 1 W. T. 69, State v. Klein 19 W. 368.

Instruction on who was aggressor disapproved, State v. Dunn 22 W. 67.

§8759. — Second Degree. §162. Every person who, under circumstances not amounting to assault in the first degree—

1. With intent to injure, shall unlawfully administer to or cause to be taken by another, poison or any other destructive or noxious thing, or any drug or medicine the use of which is dangerous to life or health; or

2. With intent thereby to enable or assist himself or any other person to commit any crime, shall administer to, or cause to be taken by another, chloroform, ether, laudanum or any other intoxicating narcotic or anaesthetic; or

3. Shall wilfully inflict grievous bodily harm upon another with or without a weapon; or

4. Shall wilfully assault another with a weapon or other instrument or thing likely to produce bodily harm; or

5. Being armed with a deadly weapon shall wilfully assault another with a whip; or

6. Shall assault another with intent to commit a felony, or to prevent or resist the execution of any lawful process or mandate of any court officer, or the lawful apprehension or detention of himself or another person; or

7. While hunting any game or other animals or birds, shall shoot another;

Shall be guilty of assault in the second degree and be punished by imprisonment in the state penitentiary for not more than ten years or by a fine of not more than one thousand dollars, or by both. N.Y.P.C. §§218, 221; Minn. C.'05 §4904.

Charges in language of statute subds. 3 and 4 valid, State v. Richter 95 W. 544.

Second degree assault sustained on the facts—instructions—declarations of accused, State v. Ross 85 W. 218.

Second degree assault with intent to commit rape sustained on the facts, State v. Williams 85 W. 253.

Charge of second degree will sustain conviction of third degree, State v. Steele 83 W. 470.

Instruction in third degree under charge of second degree is error. State v. Reynolds 94 W. 270.

Charge of assault in second degree will sustain conviction of third degree, State v. Steele 83 W. 470.

"Great bodily injury" is question for jury—instruments of injury, State v. Davis, 72 W. 261.

Conviction under subd. 4 may be had on an information under §8758, State v. Copeland 66 W. 243.

An information under subd. 6 is sufficient without stating the precise facts constituting the attempt, State v. Harsted 66 W. 158.

Forcible ejection of passenger from train in motion is assault, 34 Minn. 311, 25 N. W. 705.

Stone is dangerous weapon—place and time of arming—intent, 10 Minn. 407, Gil. 325.

Using pistol with order to get out of yard without right to give order is assault, 34 Minn. 25, 24 N. W. 290.

Premeditation implied where intent shown, 11 Minn. 154, Gil. 95.

Drunkenness as defense, 11 Minn. 154, Gil. 95; 25 Minn. 161; 28 Minn. 426, 10 N. W. 472.

Accessory need, not have aided in arming, 25 Minn. 161.

Second degree included in the first. State v. Letica 61 W. 629.

§8760. Third Degree. §163. Every person who shall commit an assault or an assault and battery not amounting to assault in either the first or second degrees, shall be guilty of assault in the third degree, and shall be punished as for a gross misdemeanor. N.Y.P.C. §§219, 222; Minn. C.'05 §4905.

By teacher on pupil, §5198.

Indecent assault on female, §9114.

Assault in third degree not included

offense under the evidence, State v. Kruger,

60 W. 542.

Cited 80 W. 14.

**§8761. Force, When Lawful.** §164. The use, attempt, or offer to use force upon or toward the person of another shall not be unlawful in the following cases:

1. Whenever necessarily used by a public officer in the performance of a legal duty, or a person assisting him and acting under his direction;

2. Whenever necessarily used by a person arresting one who has committed a felony and delivering him to a public officer competent to receive him into custody;

3. Whenever used by a party about to be injured, or by another lawfully aiding him, in preventing or attempting to prevent an offense against his person, or a malicious trespass, or other malicious interference with real or personal property lawfully in his possession, in case the force is not more than shall be necessary;

4. Whenever used in a reasonable and moderate manner by a parent or his authorized agent, a guardian, master, or teacher in the exercise of lawful authority, to restrain or correct his child, ward, apprentice or scholar;

5. Whenever used by a carrier of passengers or his authorized agent or servant, or other person assisting them at their request in expelling from a carriage, railway car, vessel, or other vehicle, a passenger who refuses to obey a lawful and reasonable regulation prescribed for the conduct of passengers, if such vehicle has first been stopped and the force used is not more than shall be necessary to expel the offender with reasonable regard to his personal safety;

6. Whenever used by any person to prevent an idiot, lunatic or insane person from committing an act dangerous to himself or another, or in enforcing necessary restraint for the protection of his person, or his restoration to health, during such period only as shall be necessary to obtain legal authority for the restraint or custody of his person. N.Y.P.C. §223; Minn. C. '05 §490b.

Is not applicable where the deceased commission of crime, 25 Minn. 161.

was only guilty of a trespass, with no Self defense, such force as is necessary intent to commit a robbery, State v. Blaine, may be used, 3 Minn. 270, Gil. 185; 34 64 W. 122. Minn. 25, 24 N. W. 290.

Parent has no right to protect child in

**§8762. Provoking Assault.** §165. Every person who shall by word, sign or gesture, wilfully provoke, or attempt to provoke, another person to commit an assault or breach of the peace, shall be guilty of misdemeanor.

## BARRATRY.

**§8763. Barratry.** §118. Every person who shall bring on his own behalf, or instigate, incite or encourage another to bring, any false suit at law or in equity in any court of this state, with intent thereby to distress or harass a defendant therein; and every person, being an attorney or counsellor at law, who shall personally, or through the agency of another, solicit employment as such attorney, in any suit pending or prospective, or, with intent to obtain such employment shall, directly or indirectly, loan any money or give or promise to give any money, property or other consideration to the person from whom such employment is sought; and every person who shall serve or send any paper or document purporting to be or resembling a judicial process, not in fact a judicial process shall be guilty of a misdemeanor; and in case the person offending is an attorney, he may, in addition thereto be disbarred from practicing law within this state. L. '15 492, R.&B. §2370.

Former statute, L. '03 68, aided consideration of costs advanced Weed v. pertous contracts—part of claim in con- Foster 58 W. 675.

**§8764. Reward by Justice or Constable.** §119. Every justice of the peace or constable who shall, directly or indirectly, buy or be interested in buying anything in action for the purpose of commencing a suit thereon before a justice of the peace, or who shall give or promise any valuable con-



sideration to any person as an inducement to bring, or as a consideration for having brought, a suit before a justice of the peace, shall be guilty of a misdemeanor. N.Y.P.C. §§137-8; Minn. C. '05 §4853.

## BIGAMY, ETC.

### Bigamy, Adultery, Etc.

**§8765. Bigamy Defined.** §201. Every person who, having a husband or wife living, shall marry another person, or continue to cohabit with such second husband or wife in this state, shall be guilty of bigamy and be punished by imprisonment in the state penitentiary for not more than five years: Provided, That this section shall not extend to a person—

1. Whose former husband or wife has been absent for five years exclusively then last past, without being known to him or her within that time to be living, and believed to be dead; or,

2. Whose former marriage has been pronounced void, annuled or dissolved by a court of competent jurisdiction. Minn. C. '05 §4947.

Direct proof of marriage required, State wife incompetent—wife not competent v. Wheeler 93 W. 538. witness, State v. Kniffen 44 W. 485.

Burden on defendant to show former

**§8766. — Punishment of Consort.** §202. Every person who shall knowingly enter into a bigamous marriage with another, or, after such marriage, continue to cohabit with such other, shall be punished by imprisonment in the state penitentiary for not more than five years, or by a fine of not more than one thousand dollars. Minn. C. '05 §4948.

**§8767. Incest.** §203. Whenever any male and female persons, nearer of kin to each other than second cousins, computing by the rules of the civil law, whether of the half or the whole blood, shall have sexual intercourse together, both shall be guilty of incest and punished by imprisonment in the state penitentiary for not more than ten years. Minn. C. '05 §4949.

Marriages prohibited, §9131-64; proof of marriage, §9131-6.

Blood relatives only under statute—no common law or former statute crime, State v. Bielman 86 W. 460.

Did not impliedly repeal §§9131-64, 3725—information need not negative lawful marriage, State v. Nakashima 62 W. 686.

Corroboration in incest not necessary, State v. Aker 54 W. 342; knowledge of relationship not necessary, State v. Glendeman 34 W. 221.

Allegation of scienter not necessary, State v. Glendeman 34 W. 221.

No saving clause being in this act prior offenses are not punishable, State v. Oliver 12 W. 547.

Incest is committed whether act done with or without consent of female, State v. Nugent 20 W. 522.

Knowledge of relationship need be charged only to defendant, State v. McGilvery 20 W. 240.

**§8768. Crime Against Nature.** §204. Every person who shall carnally know in any manner any animal or bird; or who shall carnally know any male or female person by the anus, or with the mouth or tongue; or who shall voluntarily submit to such carnal knowledge; or who shall attempt sexual intercourse with a dead body, shall be guilty of sodomy and shall be punished by imprisonment in the state penitentiary for not more than ten years. Minn. C. '05 §4950.

Former law not repealed, §9131-103.

Same act on another person afterward is res gestae, State v. McDowell 61 W. 398.

Assault with intent to commit, punish-

able at common law, State v. Place 5 W. 773.

Information for sodomy held sufficient, State v. Romans 21 W. 284.

AN ACT relating to crimes and punishments, defining the crime of adultery, providing for a single standard of morals in certain cases, and amending section 2457 of Remington & Ballinger's Annotated Codes and Statutes of Washington. Approved March 13, 1917. Laws '17 p 341.

**§8769. Defining Crime of Adultery.** §205. Whenever any married person shall have sexual intercourse with any person other than his or her lawful spouse, both such persons shall be guilty of adultery and upon conviction thereof shall be punished by imprisonment in the state penitentiary

for not more than two years or by a fine of not more than one thousand dollars: Provided, That no prosecution for violation of the provisions of this section shall be commenced except on complaint of the husband or wife made before a committing magistrate, or by filing an affidavit with the prosecuting attorney, nor after one year from the commission of the offense. R.&B. §2457.

Requires a complaint by the husband      Applies to unmarried man living with or wife before a magistrate, State v. La married woman, State v. Keith 48 W. 77. Bounty, 64 W. 415.

§8770. **Lewdness.** §206. Every person who shall lewdly and viciously cohabit with another not the husband or wife of such person, and every person who shall be guilty of open or gross lewdness, or make any open and indecent or obscene exposure of his person, or of the person of another, shall be guilty of a gross misdemeanor.

Reputation of paramour under former law—acts need not be notorious, State v. Peyner 57 W. 489.      sary defendant—prior conduct—res gestae—birth of child—proof of marriage—privileged witnesses, State v. Nelson 39 W. 221.

Information sufficient—woman not neces-

## BURGLARY.

### Burglary.

§8771. **Burglary—First Degree.** §326. Every person who, with intent to commit some crime therein shall enter in the night time, the dwelling house of another in which there shall be at the time a human being—

1. Being armed with a dangerous weapon; or,
2. Arming himself therein with such a weapon; or
3. Being assisted by a confederate actually present; or,
4. Who, while engaged in the night-time in effecting such entrance, or in committing any crime in such building or in escaping therefrom, shall assault any person; or,

5. Who, with intent to commit some crime therein, shall break and enter any bank, postoffice, railway express or railway mail car, shall be guilty of burglary in the first degree and shall be punished by imprisonment in the state penitentiary for not less than five years. N.Y.P.C. §496.

Breaking of garage and taking of automobile sustained on circumstantial evidence, State v. Dotson 97 W. 607.

Sentence of 5 to 7 years under former statute held, not abuse, State v. Mallahan, 65 W. 287.

Charge of attempt to commit burglary "having in his possession" certain implements, P. C. '05 §2275 applies, State v. Williams 43 W. 505.

Charging intent to commit crime "or" misdemeanor is good. State v. Lewis 42 W. 672.

Allegations and evidence under former law insufficient—judicial notice of daylight, State v. Gunderson 56 W. 672.

Gist is breaking and entering with intent, etc.—possession, State v. Beeman 51 W. 557.

Defendant broke into barn and took his own horses from bailee, held guilty, State v. Nelson 36 W. 126.

Outhouse must be described as "occupied herewith," State v. Randall 36 W. 438.

Removing tarpaulin from railroad car loaded with wheat is not breaking and entering, State v. Petit 32 W. 129.

Burglary of "dwelling house" consisting of hotel rooms without lease, State v. Burton 27 W. 528.

"Warehouse building" is proper description though part of building used as lodging house, State v. Dolson 22 W. 259.

Amendment of this section did not repeal following section, State v. Wilson 9 W. 218.

Charge of breaking to commit grand larceny need not allege goods were kept in office, State v. Sufferin 6 W. 107.

Rooms under lease should be alleged dwelling house and not rooms of innkeeper, State v. Johnson 4 W. 593.

Window broken open by one person and goods handed to another both guilty, State v. Boysen 30 W. 338.

Corpus delicti in burglary by entering store and taking money proven, State v. Munson 7 W. 239.

Charge of "breaking and entering" proof of either day or night will sustain charge, State v. Miller 3 W. 131.

Burglary of dwelling house is charged when house alleged to be a hotel and dwelling house, id.

Charge of breaking or entering and intent and proof of breaking or entering defendant must explain, Linback v. State 1 W. 336; State v. Anderson 5 W. 350; State v. Sufferin 6 W. 107; State v. Wilson 9 W. 218.

§8772. — **Second Degree.** §327. Every person who, with intent to commit some crime therein shall, under circumstances not amounting to



burglary in the first degree, enter the dwelling house of another or break and enter, or, having committed a crime therein shall break out of, any building or part thereof, or a room or other structure wherein any property is kept for use, sale or deposit, shall be guilty of burglary in the second degree and shall be punished by imprisonment in the state penitentiary for not more than fifteen years.

Nighttime not necessary in second degree—evidence of another burglary in the vicinity admissible, *State v. Leroy* 61 W. 405.

§8773.

**Presumption of Intent.** §328. Every person who shall unlawfully break and enter or unlawfully enter any building or structure enumerated in sections 326 and 327 of this act shall be deemed to have broken and entered or entered the same with intent to commit a crime therein, unless such unlawful breaking and entering or unlawful entry shall be explained by testimony satisfactory to the jury to have been made without criminal intent.

**Employee with key convicted of burglary,** *State v. Corcoran* 82 W. 44.

§8774. **Other Crimes.** §329. Every person who, in the commission of a burglary shall commit any other crime, shall be punished therefor as well as for the burglary, and may be prosecuted for each crime separately. Minn. C.'05 §5045.

§8775. **Making or Having Tools.** §330. Every person who shall make or mend or cause to be made or mended, or have in his possession in the day or night-time, any engine, machine, tool, false key, pick lock, bit, nippers or implement adapted, designed or commonly used for the commission of burglary, larceny or other crime, under circumstances evincing an intent to use or employ, or allow the same to be used or employed in the commission of a crime, or knowing that the same is intended to be so used, shall be guilty of a gross misdemeanor. The possession thereof except by a mechanic, artificer or tradesman at and in his established shop or place of business, open to public view, shall be prima facie evidence that such possession was had with intent to use or employ or allow the same to be used or employed in the commission of a crime. N.Y.P.C. §508; Minn. C.'05 §5046.

## CEMETERIES.

### Rights of Sepulture.

§8776. **Dissection of the Dead.** §237. The right to dissect the dead body of a human being shall be limited to cases specially provided by statute or by the direction or will of the deceased; cases where a coroner is authorized to hold an inquest upon the body, and then only as he may authorize dissection; and cases where the husband, wife or next of kin charged by law with the duty of burial shall authorize dissection for the purpose of ascertaining the cause of death, and then only to the extent so authorized. Every person who shall make, cause or procure to be made any dissection of the body of a human being, except as hereinbefore provided, shall be guilty of a gross misdemeanor. Minn. C.'05 §4975.

Cemeteries generally, §565; by cities, §891.

Dissection authorized, §3749.

§8777. **Burial or Cremating.** §238. Except in cases of dissection provided for in the last section, and where a dead body shall rightfully be carried through or removed from the state for the purpose of burial elsewhere, every dead body of a human being lying within this state, and the remains of any dissected body, after dissection, shall be decently buried, or cremated within a reasonable time after death. Minn. C.'05 §4976.

§8778. **Opening Grave—Stealing Body—Receiving.** §239. Every person who shall remove the dead body of a human being, or any part thereof, from a grave, vault, or other place where the same has been buried or deposited awaiting burial or cremation, without authority of law, with intent to sell the same, or for the purpose of securing a reward for its return, or for dis-

section, or from malice or wantonness, shall be punished by imprisonment in the state penitentiary for not more than five years, or by a fine of not more than one thousand dollars, or by both.

Every person who shall purchase or receive, except for burial or cremation, any such dead body, or any part thereof, knowing that the same has been removed contrary to the foregoing provisions, shall be punished by imprisonment in the state penitentiary for not more than three years, or by a fine of not more than one thousand dollars, or by both.

Every person who shall open a grave or other place of interment, temporary or otherwise, or a building where such dead body is deposited while awaiting burial or cremation, with intent to remove said body or any part thereof, for the purpose of selling or demanding money for the same, for dissection, from malice or wantonness, or with intent to sell or remove the coffin or of any part thereof, or anything attached thereto, or any vestment, or other article interred, or intended to be interred with the body, shall be punished by imprisonment in the state penitentiary for not more than three years, or by a fine of not more than one thousand dollars, or by both. Minn. C. '05 §4977.

**§8779. Interfering With Body or Funeral.** §240. Every person who shall arrest or attach the dead body of a human being upon a debt or demand, or shall detain or claim to detain it for any debt or demand, or upon any pretended lien or charge; or who, without authority of law, shall obstruct or detain a person engaged in carrying or accompanying the dead body of a human being to a place of burial or cremation, shall be guilty of a misdemeanor. Minn. C. '05 §4978.

**§8780. Opening Road Through Cemetery.** §241. Every person who shall make or open any road, or construct any railway, turnpike, canal, or other public easement over, through, in, or upon, such part of any inclosure as may be used for the burial of the dead, without authority of law or the consent of the owner thereof, shall be guilty of a misdemeanor. Minn. C. '05 §4979.

## CIVIL RIGHTS.

**§8781. Civil Rights.** §434. Every person who shall deny to any other person because of race, creed or color, the full enjoyment of any of the accommodations, advantages, facilities or privileges of any place of public resort, accommodation, assemblage or amusement, shall be guilty of a misdemeanor.

Infraction must be clearly shown—unnecessary force in expulsion, Chase v. Knabel 46 W. 484.

## COMPOUNDING CRIMES.

**§8782. Compounding Crimes.** §115. Every person who shall ask or receive, directly or indirectly, any compensation, gratuity or reward, or any promise thereof, upon an agreement or understanding that he will compound or conceal a crime or violation of a statute, or abstain from testifying thereto, delay a prosecution therefor or withhold any evidence thereof, except in a case where a compromise is allowed by law, shall be guilty—

1. Of a felony and punished by imprisonment in the state penitentiary for not more than five years, where the agreement or understanding relates to a felony;

2. Of a misdemeanor, where the agreement or understanding relates to a gross misdemeanor or misdemeanor, or to a violation of statute for which a pecuniary penalty or forfeiture is prescribed.

3. In any proceeding against a person for compounding a crime, it shall not be necessary to prove that any person has been convicted of the crime or violation of statute in relation to which an agreement or understanding herein prohibited was made. N.Y.P.C. §§125-6; Minn. C. '05 §4849.



Former law not repealed, §9189. be gathered from the information it is  
If defendant does not answer because sufficient—validity of warrant, State v.  
knowledge not charged directly if such can Brown 6 W. 609.

## CONSPIRACY.

**§8783. Conspiracy. §130.** Whenever two or more persons shall conspire—

1. To commit a crime; or
2. Falsely and maliciously to procure another to be arrested or proceeded against for a crime; or
3. Falsely to institute or maintain any action or proceeding; or
4. To cheat or defraud another out of any property by unlawful or fraudulent means; or
5. To prevent another from exercising any lawful trade or calling, or from doing any other lawful act, by force, threats or intimidation, or by interfering or threatening to interfere with any tools, implements or property belonging to or used by another, or with the use or employment thereof; or
6. To commit any act injurious to the public health, public morals, trade or commerce, or for the perversion or corruption of public justice or the due administration of the law; or
7. To accomplish any criminal or unlawful purpose, or to accomplish a purpose, not in itself criminal or unlawful, by criminal or unlawful means;

Every such person shall be guilty of a gross misdemeanor. N.Y.P.C. §168; Minn. C. '05 §4867.

Agreement, it seems, consummates the crime—venue anywhere acts done in furtherance, State v. Mardesich 79 W. 204. sible against himself or all if concerted action shown—proof of letters, State v. Dilly 44 W. 207.

Other false pretenses by same conspirators admissible—admission of co-defendant, State v. Craddick 61 W. 425. Conspiracy to create monopoly in the sale of milk shown—letters as evidence—limitation, State v. Erickson 54 W. 472.

Conversation of conspirator alone admis-

**§8784. — Overt Act Not Necessary. §131.** In any proceeding for a violation of section 130 of this act, it shall be necessary to prove that any overt act was done in pursuance of such unlawful conspiracy or combination.

Overt act not necessary at common law, 12 Minn. 164, Gil. 99.

**§8785. — Corporation to Forfeit Franchise. §132.** Every corporation, whether foreign or domestic, which shall violate any provision of section 130 of this act, shall forfeit every right and franchise to do business in this state. The attorney general shall begin and conduct all actions and proceedings necessary to enforce the provisions of this section. Minn. C. '05 §5169.

## CONTEMPTS.

**§8786. Criminal Contempt. §120.** Every person who shall commit a contempt of court of any one of the following kinds shall be guilty of a misdemeanor:

1. Disorderly, contemptuous or insolent behavior committed during the sitting of the court, in its immediate view and presence, and directly tending to interrupt its proceedings or to impair the respect due to its authority; or,
2. Behavior of like character in the presence of a referee, while actually engaged in a trial or hearing pursuant to an order of court, or in the presence of a jury while actually sitting in the trial of a cause or upon an inquest or other proceeding authorized by law; or,
3. Breach of the peace, noise or other disturbance directly tending to interrupt the proceedings of a court, jury or referee; or,
4. Wilful disobedience to the lawful process or mandate of a court; or,
5. Resistance, wilfully offered, to its lawful process or mandate; or,
6. Contumacious and unlawful refusal to be sworn as a witness or, after being sworn, to answer any legal and proper interrogatory; or,

7. Publication of a false or grossly inaccurate report of its proceedings; or,

8. Assuming to be an attorney or officer of a court or acting as such without authority. N.Y.P.C. §143; Minn. C.'05 §4854.

Contempt punished pleaded in mitigation court, State v. Buddress, 63 W. 26.  
of crime §8708. Before legislative committee, §3594.

Contempts generally §7442.

Contempt punished not a defense, §8708

Is declaratory of the common law and  
equivalent to contempt in the face of the

Contempts under civil practice, §7442.

## COUNTERFEITING, ETC.

### Counterfeiting—Fraudulent Practices.

**§8787. Counterfeiting—Possession of Coin.** §339. Every person who shall have in his possession a counterfeit of any gold or silver coin, whether of the United States or any foreign country or government, knowing the same to be counterfeit, with intent to sell, utter, use, circulate or export the same as true or as false, or to cause the same to be so uttered or used, shall be punished by imprisonment in the state penitentiary for not more than five years, or by a fine of not more than five thousand dollars, or by both. N.Y.P.C. §527; Minn. C.'05 §5062.

Counterfeiting gold dust etc. §9131-11.

**§8788. Advertising Counterfeit Money.** §340. Every person who, with intent to defraud, shall print, circulate or distribute a letter, circular, card, pamphlet, hand bill or any other written or printed matter offering or purporting to offer for sale, exchange or as a gift, counterfeit coin or paper money, or giving or purporting to give information where counterfeit coin or paper money can be procured, shall be punished by imprisonment in the state penitentiary for not more than five years, or by a fine of not more than five thousand dollars. N.Y.P.C. §527; Minn. C.'05 §5063

**§8789. False Certificate of Registration of Animals—Representation as to Breed.** §341. Every person who, by color or aid of any false pretense, representation, token or writing shall obtain from any club, association, society or company for the improvement of the breed of cattle, horses, sheep, swine, fowls or other domestic animals or birds, a certificate of registration of any animal or bird in a herd-book or other register of any such association, society or company, or a transfer of any such registration, and every person who shall knowingly represent an animal or bird for breeding purposes to be of a greater degree of any particular strain of blood than such animal actually possesses, shall be guilty of a gross misdemeanor. N.Y.P.C. §566a; Minn. C.'05 §5064.

Statutory damages recovered under for- and statutory damages not recoverable, mer law Pierce Code '05 §1943—both actual Galbraith v. Carmode 43 W. 456.

**§8790. Removing Lawful Brands.** §342. Every person who shall wilfully deface, obliterate, remove or alter any mark or brand placed by or with the authority of the owner thereof on any shingle bolt, log or stick of timber, or on any horse, mare, gelding, mule, cow, steer, bull, sheep, goat or hog, shall be punished, by imprisonment in the state penitentiary for not more than five years, or by imprisonment in the county jail for not more than one year, or by a fine of not more than one thousand dollars, or by both fine and imprisonment. Minn. C.'05 §5065.

**§8791. Imitating Lawful Brand.** §343. Every person who, in any county, shall place upon any property, any brand or mark in the likeness or similitude of another brand or mark filed with the county auditor of such county by the owner thereof as a brand or mark for the designation or identification of a like kind of property, shall—

1. If done with intent to confuse or commingle such property with, or to appropriate to his own use, the property of such other owner, be guilty of a felony, and be punished by imprisonment in the state penitentiary for



not more than five years, or by imprisonment in the county jail for not more than one year, or by a fine of not more than one thousand dollars, or by both fine and imprisonment; or,

2. If done without such intent, shall be guilty of a misdemeanor.

**§8792. Counterfeiting Trademark, Etc.** §344. Every person who shall use or display or have in his possession with intent to use or display, the genuine label, trademark, term, design, device, or form of advertisement of any person, corporation, association or union, lawfully filed for record in the office of the secretary of state, or the exclusive right to use which is guaranteed to any person, corporation, association or union, by the laws of the United States, without the written authority of such person, corporation, association or union, or who shall wilfully forge or counterfeit or use or display or have in his possession with intent to use or display any representation, likeness, similitude, copy or imitation of any genuine label, trademark, term, design, device, or form of advertisement, so filed or protected, or any die, plate, stamp or other device for manufacturing the same, shall be guilty of a gross misdemeanor. Minn. C.'05 §5066.

Trade marks, §7101; misbranded food, §2538; log marks, §3696.

**§8793. Displaying Goods With False Trademark.** §345. Every person who shall knowingly sell, display or advertise, or have in his possession with intent to sell, any goods, wares, merchandise, mixture, preparation or compound having affixed thereto any label, trademark, term, design, device, or form of advertisement lawfully filed for record in the office of the secretary of state by any person, corporation, association or union, or the exclusive right to the use of which is guaranteed to such person, corporation, association or union under the laws of the United States, which label, trademark, term, design, device or form of advertisement shall have been used or affixed thereto without the written authority of such person, corporation, association or union, or having affixed thereto any forged or counterfeit representation, likeness, similitude, copy or imitation thereof, shall be guilty of a misdemeanor. Minn. C.'05 §5068.

**§8794. When Trade Mark Affixed.** §346. A label, trademark, term, design, device or form of advertisement shall be deemed to be affixed to any goods, wares, merchandise, mixture, preparation or compound whenever it is in any manner placed in or upon either the article itself, or the box, bale, barrel, bottle, case, cask or other vessel or package, or the cover, wrapper, stopper, brand, label or other thing in, by or with which the goods are packed, enclosed or otherwise prepared for sale or distribution. Minn. C.'05 §5071.

**§8795. Fraudulent Registration.** §347. Every person who shall for himself, or on behalf of any other person, corporation, association or union, procure the filing of any label, trademark, term, design, device or form of advertisement, with the secretary of state by any fraudulent means, shall be guilty of a misdemeanor. Minn. C.'05 §5075.

**§8796. Form and Similitude Defined.** §348. A plate, label, trademark, term, design, device or form of advertisement is in the form and similitude of the genuine instrument imitated if the finished parts of the engraving thereupon shall resemble or conform to the similar parts of the genuine instrument. Minn. C.'05 §5047.

## DRUNKENNESS, ETC.

### CHAPTER 10.—Miscellaneous Crimes.

**§8797. Drunkenness.** §416. Every person who shall become intoxicated by voluntarily drinking intoxicating liquors, and who, while intoxicated shall loiter about any place where intoxicating liquors are sold or kept for sale, or create any disturbance or use any profane or indecent language in any public place, street or meeting, or commit any assault or breach of the peace, shall be guilty of a misdemeanor. Minn. C.'05 §5161.

Drunkards, care of property, etc. §9869.

**§8798. Common Drunkard.** §417. Every person who shall be three times convicted of a violation of section 416 of this act, or of any municipal ordinance defining and punishing drunkenness or any crime of which drunkenness shall be an element, or who shall squander his property in drink, or who, as a result of the use of intoxicating liquors shall abuse or fail properly to support or care for his wife or any minor child lawfully in his custody, shall be a common drunkard, and shall be adjudged so to be by any magistrate before whom he may be brought on a charge of committing any crime of which drunkenness is an element, in addition to any other punishment inflicted therefor.

**Supplementary—AN ACT to prohibit indecent practices, drunkenness and boisterous conduct and fixing a penalty for the violation thereof.** Approved August 28, 1909. Laws '09 Ex. Sess. 61.

**§8799. Indecent or Drunken Conduct.** §1. Any person who shall use in the presence of any person any indecent or vulgar language, or who shall appear upon any public road or street or in any or upon any public place or conveyance in any indecent, drunken or maudlin condition or boisterous manner shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished accordingly.

**§8800. Opium Joints.** §418. Every person who shall open, conduct or maintain, as owner or employe, any place where opium, morphine, alkaloid-cocaine or alpha or beta eucaine or any derivative, mixture or preparation of any of them, shall be in any manner used by persons resorting thereto for the purpose; and every person who shall visit or resort to such place for the purpose of using in any manner any of said drugs, shall be guilty of a gross misdemeanor. Minn. C.'05 §5162.

This section is not deprivation of liberty without due process, *Ah Lim v. Territory* 1 W. 156.

**§8801. Admitting Convict to Saloon—Selling to Drunkard.** §437. Every person, being the owner or manager of, or an employe in any drinking saloon, drinking cellar or public dance hall or music hall where intoxicating liquors are sold or kept for sale, who shall knowingly permit to enter such saloon, cellar or hall, or give employment to, or sell or give any intoxicating liquor to, any person previously convicted, whether in this state or elsewhere, of a crime of which fraud or the intent to defraud is an element, or of petit larceny, or of any crime which under the laws of this state would amount to to felony, or who shall sell or give any intoxicating liquor to any person known or adjudged to be a common drunkard, or to any person in an intoxicated condition, shall be guilty of a misdemeanor. L '09 Ex Sess 66.

**§8802. Drinking in Public Conveyances.** §441. Every person who shall drink any intoxicating liquor in any public conveyance, except in a compartment or place where sold or served under the authority of a license lawfully issued, shall be guilty of a misdemeanor.

**§8803. —Carrier Not to Permit.** §442. Every person engaged wholly or in part in the business of carrying passengers for hire, and every agent, servant, or employe of such person, who shall knowingly permit any person to drink any intoxicating liquor in any public conveyance, except in the compartment where such liquor is sold or served under the authority of a license lawfully issued, shall be guilty of a misdemeanor.

**§8804. Misrepresenting Liquors.** §443. Every person who, as principal, agent or otherwise, shall sell or offer for sale any spirituous or distilled intoxicating liquor known as whiskey (except Scotch or Irish whiskey,) any part of which has not been aged for a period of four years in wooden barrels or casks, or who shall, as principal, agent or otherwise, sell or offer for sale any malt liquor that has not been aged for a period of more than sixty (60) days, or which contains more than eight (8) per cent. alcohol by weight shall be guilty of a gross misdemeanor.

**§8805. —Low Wines or Spirits.** §444. Every person who, by mixing, compounding or distilling low wines or ardent spirits, or who, by adding thereto any flavoring or other substance, shall produce, or who shall sell or



offer for sale or have in his possession with intent to sell, any liquor known as whiskey, gin or brandy, so produced, shall be guilty of a gross misdemeanor.

## DUELING.

### Duels.

**§8806. Duel Defined.** §167. Every person who shall fight a duel or engage in any combat with another with a deadly weapon, by previous agreement, or upon a previous quarrel, although no death or wound shall ensue, shall be punished by imprisonment in the state penitentiary for not more than ten years. N.Y.P.C. §234; Minn. C. '05 §4911.

**§8807. — Challenger, Abettor, Etc.** §168. Every person who shall challenge another to fight a duel, or who shall send a written or verbal message purporting or intended to be a challenge to fight a duel, or an invitation to a combat with deadly weapons, or shall accept such a challenge or message, or shall knowingly carry or deliver such challenge or message, or be present at the time appointed for such duel or combat, or when the same is fought, either as second, aide, or surgeon, or who shall advise, or abet, or give any countenance or assistance to such duel or combat upon previous agreement, shall be punished by imprisonment in the state penitentiary for not more than five years. N.Y.P.C. §235; Minn. C. '05 §4912.

**§8808. — Attempt to Induce Challenge.** §169. Every person who shall send or use to another any word or sign whatever with intent to provoke or induce such person to give or receive a challenge to fight a duel, or who shall post or advertise another for not fighting a duel or for not sending or accepting a challenge to fight a duel, or who, in writing or in print, shall use reproachful or contemptuous language to or concerning anyone for not sending or accepting a challenge to fight a duel, or for not fighting a duel, shall be guilty of a gross misdemeanor. N.Y.P.C. §§237-8; Minn. '05 §4913.

**§8809. Duel Outside State, Venue.** §170. Every person who shall leave the state with intent to elude any provision of sections 167 or 168 of this act, or to commit any act outside of the state punished by the provisions thereof, if committed in the state, shall be guilty of the same offense and subject to the same punishment as if the act had been committed or was to have been consummated in the state and may be proceeded against and tried in any county therein, but a former conviction or acquittal in another state or county for the same offense shall be a bar to further proceedings against him for such offense. N.Y.P.C. §§239-40; Minn. C. '05 §4914.

**§8810. Witnesses.** §171. Every person offending against any provision contained in sections 167 to 170, inclusive, of this act, shall be a competent witness against any other offender in the same transaction, and shall not be excused from giving testimony tending to incriminate himself. N.Y.P.C. §241; Minn. C. '05 §4915.

## ELECTIONS, §9131-19.

## EMBEZZLEMENT, ETC.

### Chapter IX.—Crimes Against Property—Crimes Against State Property.

**§8811. Embezzlement and Falsification of Accounts by Public Officer.** §317. Every public officer, and every other person receiving money on behalf or for or on account of the people of the state or of any department of the state government or of any bureau or fund created by law in which the people are directly or indirectly interested, or for or on account of any county, city, town or any school, diking, drainage or irrigation district, who—

1. Shall appropriate to his own use or the use of any person not entitled thereto, without authority of law, any money so received by him as such officer or otherwise; or,

2. Shall knowingly keep any false account, or make any false entry or erasure in any account, of or relating to any money so received by him; or,

3. Shall fraudulently alter, falsify, conceal, destroy or obliterate any such account; or,

4. Shall wilfully omit or refuse to pay over to the state, its officer or agent authorized by law to receive the same, or to such county, city, town or such school, diking, drainage or irrigation district or to the proper officer or authority empowered to demand and receive the same, any money received by him as such officer when it is a duty imposed upon him by law to pay over and account for the same, shall be punished by imprisonment in the state penitentiary for not more than fifteen years. Minn. C.'05 §5029.

Creating deficiency, §6571; larceny, ceny charged under this section when other elements set out information is valid, §8944. State v. Isensee 12 W. 254.

Minnesota constitution defined crime independent of statute—when demand by successor in office necessary—description of funds 22 Minn. 67; 38 Minn. 192, 36 N. W. 457.

Warrant paid but not stamped was stamped by officer and he obtained credit—time and evidence of the conversion 28 Minn. 226, 9 N. W. 704.

Refusal to turn over moneys to successor is embezzlement—allegation of office—amount of money—statements and receipt as evidence 29 Minn. 78, 11 N. W. 233

Negligence and mismanagement is not defense 38 Minn. 192, 36 N. W. 457.

Public officer using public funds may be prosecuted under §8944 although lar-

Information against county officer held sufficient and instruction proper though there is another statute making offense a misdemeanor, State v. Downing 15 W. 413.

Applies to officers of cities with freeholders' charters, State v. Krug 12 W. 288.

Indictment held sufficiently direct and certain, id.

Verdict of guilty for receiving interest on public funds from bank sustained, although defendant made deposit honestly if he receives interest by checking against individual account to which interest credited it is sufficient to sustain verdict. State v. Boggs 16 W. 143; State v. McCauley 17 W. 88.

**§8812. Other Offenses by Officers.** §318 Every officer or other person mentioned in section 317 of this act, who shall wilfully disobey any provision of law regulating his official conduct in cases other than those specified in said section, shall be guilty of a gross misdemeanor. Minn. C.'05 §5030.

**§8813. Embezzlement by Treasurer.** §319. Every state, county, city or town treasurer who shall wilfully misappropriate any moneys, funds or securities received by or deposited with him as such treasurer, or who shall be guilty of any other malfeasance or wilful neglect of duty in his office, shall be punished by imprisonment in the state penitentiary for not more than five years or by a fine of not more than five thousand dollars. Minn. C.'05 §5031.

Embezzlement by state treasurer, §6704

## ESCAPES.

### Rescues and Escapes.

**§8814. Rescuing Prisoner.** §87. Every person who shall, by force or fraud, rescue from lawful custody, or from an officer or person having him in lawful custody, a prisoner held upon a charge, arrest, commitment, conviction or sentence for felony, shall be guilty of a felony; and every person who shall rescue a prisoner held upon a charge, arrest, commitment, conviction or sentence for a gross misdemeanor or misdemeanor shall be guilty of a misdemeanor. N.Y.P.C. §82; Minn. C.'05 §4819.

**§8815. Taking Property from an Officer.** §88. Every person who shall take from the custody of any officer or other person any personal property in his charge under any process of law, or who shall wilfully injure or destroy such property, shall be guilty of a misdemeanor. N.Y.P.C. §83; Minn. C.'05 §4820.

**§8816. Escaped Prisoner Recaptured—Penalty.** §89. Every person in custody, under sentence of imprisonment for any crime, who shall escape from custody, may be recaptured and imprisoned for a term equal to the unexpired portion of the original term. N.Y.P.C. §84; Minn. C.'05 §4821.



**§8817. Prisoner Escaping.** §90. Every prisoner confined in a prison, or being in the lawful custody of an officer or other person, who shall escape or attempt to escape from such prison or custody, by force of fraud, if he is held on a charge, conviction or sentence of a felony, shall be guilty of a felony; if held on a charge, conviction or sentence of a gross misdemeanor or misdemeanor, he shall be guilty of a misdemeanor. N.Y.P.C. §85; Minn. C. '05 §4822.

Jail breaking in another state must be registration for election, *State v. Collins*, shown infamous to support charge of false 69 W. 268.

**§8818. Aiding Prisoner to Escape.** §91. Every person who, with intent to effect or facilitate the escape of a prisoner, whether such escape shall be effected or attempted or not, shall convey or send to a prisoner any information or aid, or convey or send into a prison any disguise, instrument, weapon or other thing, or aid or assist a prisoner in escaping or attempting to escape from the lawful custody of a sheriff or other officer or person, shall be guilty of a felony if such prisoner is held upon a charge, arrest, commitment, conviction or a sentence for a felony, and shall be guilty of a misdemeanor if such prisoner is held upon a charge, arrest, commitment, conviction or sentence for a gross misdemeanor or misdemeanor. N.Y.P.C. §§87-8; Minn. C. '05 §4824.

**§8819. Custodian Suffering Escape.** §92. Every person who shall allow a prisoner lawfully in his custody to escape, or shall connive at or assist such escape, or shall omit any act or duty by reason of which omission such escape is occasioned, contributed to or assisted, shall, if he connive at or assist such escape, be guilty of a felony; and in any other case, of a gross misdemeanor. N.Y.P.C. §89; Minn. C. '05 §4825.

**§8820. Ministerial Officer Permitting Escape.** §93. Every officer who shall ask or receive, directly or indirectly, any compensation, gratuity or reward, or promise thereof, to procure, assist, connive at or permit any prisoner in his custody to escape, whether such escape shall be attempted or not, or shall commit any unlawful act tending to hinder justice, shall be guilty of a gross misdemeanor. Minn. C. '05 §4826.

**§8821. Concealing Escaped Prisoner.** §94. Every person who shall conceal, or harbor for the purpose of concealment, a prisoner who has escaped or is escaping from custody, shall be guilty of a felony if the prisoner is held upon a charge or conviction or sentence of felony, and of a misdemeanor if the prisoner is held upon a charge or conviction of a gross misdemeanor or misdemeanor. N.Y.P.C. §91; Minn. C. '05 §4827.

**§8822. Unauthorized Communication With Prisoner.** §125. Every person who, not being authorized by law or by any officer authorized thereto, shall have any verbal communication with any prisoner in any jail, reformatory, penitentiary or other penal institution, or shall bring into or convey out of the same any writing, clothing, food, tobacco or any article whatsoever, shall be guilty of a misdemeanor. Minn. C. '05 §4861.

## EXTORTION.

### Extortion or Oppression.

**§8823. Extortion Defined.** §358. Every person, who, under circumstances not amounting to robbery, shall extort or gain any money, property or advantage, or shall induce or compel another to make, subscribe, execute, alter or destroy any valuable security or instrument or writing affecting or intended to affect any cause of action or defense, or any property, by means of force or any threat, either—

1. To accuse any person of a crime; or
2. To do any injury to any person or to any property; or
3. To publish or connive at publishing any libel; or
4. To expose or impute to any person any deformity or disgrace; or
5. To expose any secret—

Shall be guilty of extortion and shall be punished by imprisonment in the state penitentiary for not more than five years. Minn. C. '05 §5096.

Ferryman or gatekeeper, §9131-36; ferries, §2388.

Officer taking illegal fees, §7488; ferryman, §9131-36.

Check though probably valueless is subject of extortion, State v. Barr, 67 W. 87.

The crime of extortion is established if the demand was made on a threat, al-

though violence may have been done subsequently, State v. Barr, 67 W. 87.

Threat to institute criminal prosecution was not offense at common law, State v. Nethercutt 48 W. 105.

Creates cause of action in favor of person injured—money paid recovered, Bertschinger v. Campbell 99 W. 142.

**§8824. Oppression Under Color of Office.** §359. Every officer, or person pretending to be such, who unlawfully and maliciously, under pretense or color of official authority shall—

1. Arrest another or detain him against his will; or
2. Seize or levy upon another's property; or
3. Dispossess another of any lands or tenements; or
4. Do any act whereby another person shall be injured in his person, property or rights, commits oppression, shall be guilty of a gross misdemeanor.

5. No officer or person having the custody and control of the body or liberty of any person under arrest, shall refuse permission to such arrested person to communicate with his friends or with an attorney, nor subject any person under arrest to any form of personal violence, intimidation, indignity or threats for the purpose of extorting from such person incriminating statements or a confession. Any person violating the provisions of this section shall be guilty of a misdemeanor. N.Y.P.C. §556; Minn. C.'05 §5098.

Confession obtained by violation of section inadmissible in evidence, State v. Miller, 68 W. 239.

**§8825. Extortion by Public Officer.** §360. Every public officer who shall ask or receive, or agree to receive a fee or other compensation for his official service, either—

1. In excess of the fee or compensation allowed to him by statute therefor; or

2. Where no fee or compensation is allowed to him by statute therefor, commits extortion, and is guilty of a misdemeanor. N.Y.P.C. §557; Minn. C.'05 §5099. County officer taking illegal fees, §7488.

**§8826. Blackmail Defined.** §361. Every person who, with intent thereby to extort or gain any money or other property or to compel or induce another to make, subscribe, execute, alter or destroy any valuable security or instrument or writing affecting or intended to affect any cause of action or defense, or any property, or to influence the action of any public officer, or to do or abet or procure any illegal or wrongful act, shall threaten directly or indirectly—

1. To accuse any person of a crime; or
2. To do any injury to any person or to any property; or
3. To publish or connive at publishing any libel; or
4. To expose or impute to any person any deformity or disgrace; or
5. To expose any secret—

Shall be punished by imprisonment in the state penitentiary for not more than five years or by imprisonment in the county jail for not more than one year, or by a fine of not more than one thousand dollars, or by both fine and imprisonment. N.Y.P.C. §558; Minn. C.'05 §5100.

Sufficiency of charge—accused trying to get his due hearing on "intent"—advice of counsel, State v. Richards 97 W. 587.

**§8827. Coercion Defined.** §362. Every person who, with intent to compel another to do or abstain from doing an act which such other person has a right to do, or abstain from doing, shall wrongfully and unlawfully—

1. Use violence or inflict injury upon such other person or any of his family, or upon his property, or threaten such violence or injury; or
2. Deprive such person of any tool, implement or clothing, or hinder him in the use thereof; or

3. Attempt to intimidate such person by threats or force—

Shall be guilty of a misdemeanor. Minn. C.'05 §5140.



## FAMILY.

## Crimes Against Children, Etc.

**AN ACT** concerning domestic relations and to prevent and punish family desertion or non-support of wife or child or children, and providing for support bonds and suspension of trial and sentence, and authorizing and directing the county commissioners to work convicted persons and to pay certain monies to the wife, or child, or children for the labor performed by convicted persons; and providing the evidence required to prove, and the punishment of such offenses, and repealing sections 2444 and 5933 of Remington & Ballinger's Annotated Codes and Statutes of Washington. Approved March 6, 1913. Laws '13 ch 28.

**§8828. Abandonment of Wife and Child. §1.** Every person who,  
1st: Having any child under the age of 16 years dependent upon him or her for care, education or support, deserts such child in any manner whatever, with intent to abandon it;

2nd: Wilfully omits, without lawful excuse, to furnish necessary food, clothing, shelter, or medical attendance for his or her child or children or ward or wards;

3rd: Having sufficient ability to provide for his wife's support, or who is able to earn the means for such wife's support, who wilfully abandons and leaves his wife in a destitute condition, or who refuses or neglects to provide such wife with necessary food, clothing, shelter, or medical attendance, unless by her misconduct he is justified in abandoning her.

Shall be guilty of a gross misdemeanor.

Alternative charges not duplicitous, a minor child awarded to the wife, he could not be prosecuted for the child's non-support, State v. Gipson 92 W. 646.

Power to change orders does not apply to punishment once imposed—judgment under §2 final, State ex rel. Brown v. Superior Court 79 W. 570. Evidence held to support conviction, State v. McPherson, 72 W.

Where a divorced husband was ordered to pay a certain sum for the support of legal age, State v. McPherson, 72 W. Punishing husband for non-support applies to marriages voidable for want of

**§8829. Orders to the Court—Payments to Wife or Children. §2.** In any case enumerated in the previous section, the court may render one of the following orders:

1st: Should a fine be imposed it may be directed by the court to be paid in whole or in part to the wife, or to the guardian, or to the custodian of the child or children, or to an individual appointed by the court as trustee.

2nd: Before trial, or after conviction, with the consent of the defendant, the court, in its discretion, having regard to the circumstances and to the financial ability or earning capacity of the defendant, shall have the power to make an order, which shall be subject to change by it from time to time as circumstances may require, directing the defendant to pay a certain sum weekly during such time as the court may direct, to the wife or to the guardian, or custodian of the minor child or children, or to an individual appointed by the court, and to release the defendant from custody or probation during such time as the court may direct, upon his or her entering into a recognizance, with or without sureties, in such sum as the court may direct. The condition of the recognizance to be such that if the defendant shall make his or her appearance in court whenever ordered to do so, and shall further comply with the terms of the order and of any subsequent modification thereof, then the recognizance shall be void, otherwise to remain in full force and effect.

3rd: Where conviction is had and sentence to imprisonment in the county jail is imposed, the court may direct that the person so convicted shall be compelled to work upon the public roads or highways, or any other public work, in the county where such conviction is had, during the time of such sentence. And it shall be the duty of the board of county commissioners of the county where such conviction and sentence is had, and where such work is performed by persons under sentence to the county jail, to allow and or-

der the payment, out of the current fund, to the wife, or to the guardian, or the custodian of the child or children, or to an individual appointed by the court as trustee, at the end of each calendar month, for the support of such wife, child, or children, ward or wards, a sum not to exceed one and fifty one-hundredths dollars for each day's work of such person.

**§8830. Evidence. §3.** Proof of the abandonment or non-support of a wife, or the desertion of a child or children, ward or wards, or the omission to furnish necessary food, clothing, shelter, or medical attendance for a child or children, ward or wards, is prima facie evidence that such abandonment or non-support, or omission to furnish food, clothing, shelter, or medical attendance, is wilful. The provisions of section one are applicable whether the parents of such child or children are married or divorced and regardless of any decree made in said divorce action relative to alimony or to the support of the wife or child or children.

Nonsupport held wilful, *State v. Bracking* 82 W. 385.

**§8831. Admitting to Resorts—Games—Use of Fire Arms—Sale of Tobacco, Etc. §193.** Every person who—

(1) Shall admit to or allow to remain in any concert saloon, or in any place owned, kept, or managed by him where intoxicating liquors are sold, given away or disposed of—except a restaurant or dining-room, any person under the age of twenty-one years; or,

(2) Shall admit to, or allow to remain in any dance-house, public pool or billiard hall, or in any place of entertainment injurious to health or morals, owned, kept, or managed by him, any person under the age of twenty-one years; or,

(3) Shall suffer or permit any such person to play any game of skill or chance, in any such place, or in any place adjacent thereto, or to be or remain therein, or admit or allow to remain in any reputed house of prostitution or assignation, or in any place where opium or any preparation thereof, is smoked, or where any narcotic drug is used, any person under the age of twenty-one years; or,

(4) Shall sell or give, or permit to be sold or given to any person under the age of twenty-one years any intoxicating liquor, cigar, cigarette, cigarette paper or wrapper, or tobacco in any form; or,

(5) Shall sell, or give, or permit to be sold or given to any person under the age of eighteen years, any revolver, pistol, or toy pistol;

Shall be guilty of a gross misdemeanor.

It shall be no defense to a prosecution for a violation of this section that the person acted, or was believed by the defendant to act, as agent or representative of another.

Any person between the ages of eighteen and twenty-one years who shall by affirmative misrepresentation of age, purchase, or shall have in his or her possession, any cigar, cigarette, cigarette paper or wrapper, or tobacco in any form, shall be guilty of a misdemeanor. L'19 ch 17; R.&B. §2445; L'09 Ex Sess 66; N. Y., P. C. §290; Minn. C. '05 §4936.

Neither intent nor wilfulness necessary to constitute crime, *State v. Moser* 98 W. 481.

Use of firearms by minor, §8839.

Par. 4; former law not repealed, §§636c, 636d.

Minor lawfully bought and sold liquor under licenses, *Lackaff v. Hinz* 73 W. 21.

Former law prohibited sale of beer—charge of sale to former minors not duplicitous—proof of sale and minority, *State v. McCormick* 56 W. 469.

If no intoxicating liquors sold minors may be admitted, *State v. Anderson* 61 W. 674.

**§8832. Employment of Minors. §194.** Every person who shall employ, or cause to be employed, exhibit or have in his custody for exhibition or employment any minor actually or apparently under the age of eighteen years, and every parent, relative, guardian, employer or other person having the care, custody, or control of any such minor, who shall in any way procure or consent to the employment of such minor—

1. In begging, receiving alms, or in any mendicant occupation; or,
2. In any indecent or immoral exhibition or practice; or
3. In any practice or exhibition dangerous or injurious to life, limb, health or morals; or,



4. As a messenger for delivering letters, telegrams, packages or bundles, to any known house of prostitution or assignation;

Shall be guilty of a misdemeanor. Minn. C.'05 §4939.

**§8833. Employment of Children.** §195. Every person who shall employ, and every parent, guardian or other person having the care, custody or control of such child, who shall permit to be employed, by another, any male child under the age of fourteen years, or any female child under the age of sixteen years, at any labor whatever, in or in connection with any store, shop, factory, mine or any inside employment not connected with farm or house work, without the written permit thereto of a judge of a superior court of the county wherein such child may live, shall be guilty of a misdemeanor.

School children, §5220; child labor, contributory negligence whether or not §3443; in bakeries, §249. the parents misrepresent the child's age,

Employer of child under 14 years old *Glucina v. Goss Brick Co.*, 63 W. 401 assumes all risk of injuries regardless of

**§8834. Solemnizing Unlawful Marriage.** §419. Every person who shall solemnize a marriage when either party thereto is known to him to be under the age of legal consent, or to be an idiot, insane person, habitual criminal or common drunkard, or a marriage to which, within his knowledge, any legal impediment exists, shall be guilty of a gross misdemeanor. Minn. C.'05 §5165.

Solemnizing unlawful marriage, prior act failure to record, §9131-65; marriages prohibited, §9131-64. §3772.

Marriage, §3707; solemnizing unlawful

### FIREARMS AND WEAPONS.

**§8835. Dangerous Weapons—Evidence.** §265. Every person who shall manufacture, sell or dispose of or have in his possession any instrument or weapon of the kind usually known as slung shot, sand club, or metal kunckles; shall furtively carry, or conceal any dagger, dirk, knife, pistol, or other dangerous weapon; or who shall use any contrivance or device for suppressing the noise of any fire arm, shall be guilty of a gross misdemeanor. N.Y.P.C. §§409-10; Minn. C.'05 §4996.

**§8836. Setting Spring Gun.** §266. Every person who shall set a so-called trap, spring pistol, rifle, or other deadly weapon, shall be punished as follows:

1. If no injury result therefrom to any human being, by imprisonment in the county jail not more than one year or by a fine of not more than one thousand dollars, or by both.

2. If injuries not fatal result therefrom to any human being, by imprisonment in the state penitentiary for not more than twenty years.

3. If the death of a human being results therefrom, by imprisonment in the state penitentiary for not more than twenty years. Minn. C.'05 §5176.

**AN ACT** relating to the carrying of firearms, requiring licenses of certain persons, and fixing a penalty for the violation thereof. Approved March 11, 1911. Laws '11 p 303.

**§8837. Aliens, License to Carry Firearms.** §1. It shall be unlawful for any person who is not a citizen of the United States, or who has not declared his intention to become a citizen of the United States, to carry or have in his possession at any time any shot gun, rifle or other firearm, without first having obtained a license from the state auditor, and said license is not to be issued by said state auditor except upon the certificate of the consul domiciled in the State of Washington and representing the country of such alien, that he is a responsible person and upon the payment for said license of the sum of fifteen dollars (\$15.00); nothing in this section contained shall be constructed to allow aliens to hunt or fish in this state without first having obtained a regular hunting or fishing license. Any person violating the provisions of this section shall be guilty of a misdemeanor.

**§8838. Firearms—Aiming or Discharging.** §307. Every person who shall aim any gun, pistol, revolver or other firearm, whether loaded or not, at or towards any human being, or who shall wilfully discharge any firearm, air gun or other weapon, or throw any deadly missile in a public place, or in any place where any person might be endangered thereby, although no injury result, shall be guilty of a misdemeanor. Minn. C.'05 §5024.

Setting trap or spring gun, §8836.

**§8839. Use of by Minor.** §308. No minor under the age of fourteen years shall handle or have in his possession or under his control, except while accompanied by or under the immediate charge of his parent or guardian, any firearm of any kind for hunting or target practice or for other purposes. Every person violating any of the foregoing provisions, or aiding or knowingly permitting any such minor to violate the same, shall be guilty of a misdemeanor. Minn. C.'05 §5025.

Selling, etc., toy pistol to minor, §8831.

## FIRES.

**§8840. Obstruction of Extinguishment of Fire.** §267. Every person who, with intent to prevent or obstruct the extinguishment of any fire, shall cut or remove any bell rope, wire or other apparatus for communicating an alarm of fire, or cut, injure or destroy any engine, hose, or other fire apparatus, or otherwise prevent or obstruct the extinguishment of any fire, shall be punished by imprisonment in the state penitentiary for not more than five years, or by imprisonment in the county jail for not more than one year, or by a fine of not more than one thousand dollars. Minn. C.'05 §5144.

Prior laws not repealed §9131-7. property, §9131-39; fire communicated, Laws not repealed, §9131-37; personal §9131-11; forest act, §2568.

**§8841. Obstructing Firemen.** §268. Every person who at the burning of any building shall be guilty of any disobedience to the lawful orders of a public officer or fireman or of resistance to or interference with the lawful efforts of any fireman, or company of firemen to extinguish the same, or of disorderly conduct likely to interfere with the extinguishment thereof, or who shall forbid, prevent or dissuade others from assisting to extinguish such fire, shall be guilty of a misdemeanor. N.Y.P.C. §414; Minn. C.'05 §4998.

**§8842. Smoking, Where Prohibited.** §269. Every person who shall light a pipe, cigar or cigarette in, or who shall enter with a lighted pipe, cigar or cigarette, any mill or other building on which is posted in a conspicuous place over and near each principal entrance a notice in plain, legible characters stating that no smoking is allowed in such building, shall be guilty of a misdemeanor. Minn. C.'05 §5145.

**§8843. Setting Fire.** §270. Every person who, within a county where there is a deputy fire warden, shall burn any wood or brush between the 1st day of June and the 1st day of October in each year, without first obtaining a permit thereto from such deputy fire warden, or who, in setting, guarding or extinguishing any fire in such wood or brush, shall wilfully or negligently fail to observe any precaution prescribed by such deputy fire warden, shall be guilty of a misdemeanor; Provided, That nothing herein contained shall prevent any person from burning any logs, stumps, drift or brush heaps in small quantities isolated from other inflammable material under personal supervision and such other safeguards as shall prevent such fires from spreading.

Laws not repealed, §9131-37; communicated, §9131-111; forest act, §2568; setting to personal property, §9131-39.

**§8844. Negligent Fires.** §271. Every person who shall wilfully or negligently set, or fail to carefully guard or extinguish any fire, whether on his own land or the land of another, whereby the timber or property of another shall be endangered, or who shall fail to respond to any lawful summons to aid in guarding or extinguishing any fire, shall be guilty of a misdemeanor. N.Y.P.C. §413; Minn. C.'05 §4997.

**§8845. Operating Dangerous Engine.** §272. Every person who shall operate or permit to be operated in dangerous proximity to any brush, grass or other inflammable material, any engine or boiler which is not equipped with a modern spark arrester, in good condition, shall be guilty of a misdemeanor.



**§8846. Door of Public Buildings to Swing Outward.** §273. The doors of all theatres, opera houses, school buildings, churches, public halls, or places used for public entertainments, exhibitions or meetings, which are used exclusively or in part for admission to or egress from the same, or any part thereof, shall be so hung and arranged as to open outwardly, and during any exhibition, entertainment or meeting, shall be kept unlocked and unfastened, and in such condition that in case of danger or necessity, immediate escape from such building shall not be prevented or delayed; and every agent or lessee of any such building who shall rent the same or allow it to be used for any of the aforesaid public purposes without having the doors thereof hung and arranged as hereinbefore provided, shall, for each violation of any provision of this section, be guilty of a misdemeanor. Minn. C. '05 §5179.

### FLAGS, ETC.

**AN ACT to prevent the desecration, mutilation or improper use of the flag of the United States of America or of this state, or of any flag, standard, color, ensign or shield authorized by law; repealing Sections 2675 of Remington & Ballinger's Codes and Statutes of Washington, and providing penalties for the violation thereof.** Approved March 13, 1919. L '19 ch 107.

**§8847. U. S. or State Flags Defined.** §1. The words flag, standard, color, ensign or shield, as used in this act, shall include any flag, standard, color, ensign or shield, or copy, picture or representation thereof, made of any substance or represented or produced thereon, and of any size, evidently purporting to be such flag, standard, color, ensign or shield of the United States or of this state, or a copy, picture or representation thereof.

**§8847-1. Unlawful Exhibition or Use.** §2. No person shall, in any manner, for exhibition or display:

(a) place or cause to be placed any word, figure, mark, picture, design, drawing or advertisement of any nature upon any flag, standard, color, ensign or shield of the United States or of this state, or authorized by any law of the United States or of this state; or

(b) expose to public view any such flag, standard, color, ensign or shield upon which shall have been printed, painted or otherwise produced, or to which shall have been attached, appended, affixed or annexed any such word, figure, mark, picture, design, drawing or advertisement; or

(c) expose to public view for sale, manufacture, or otherwise, or to sell, give, or have in possession for sale, for gift or for use for any purpose, any substance, being an article of merchandise, or receptacle, or thing for holding or carrying merchandise, upon or to which shall have been produced or attached any such flag, standard, color, ensign or shield, in order to advertise, call attention to, decorate, mark or distinguish such article or substance.

**§8847-2. Public Disrespect...** §3. No person shall publicly mutilate, deface, defile, defy, trample upon or by word or act cast contempt upon any such flag, standard, color, ensign or shield.

**§8847-3. Exceptions.** §4. This statute shall not apply to any act permitted by the statutes of the United States or of this state, or by the United States Army and Navy regulations, nor shall it apply to any printed or written document or production, stationery, ornament, picture or jewelry whereon shall be depicted said flag, standard, color, ensign or shield with no design or words thereon and disconnected with any advertisement.

**§8847-4. Penalties.** §5. Any violation of this act shall be a gross misdemeanor.

**§8847-5. Uniform Law.** §7. This act shall be so construed as to effectuate its general purpose and to make uniform the laws of the states which enact it.

**AN ACT forbidding the ownership, possession or display of certain emblems, and providing penalties.** Approved March 19, 1919. L'19 ch 181.

**§8847-6. Unpatriotic Flags Prohibited.** §1. No flag, banner, standard, insignia, badge, emblem, sign or other device of, or suggestive of, any organized or unorganized group of persons who, by their laws, rules, declar-

ations, doctrines, creeds, purposes, practices or efforts, espouse, propose or advocate any theory, principle or form of government antagonistic to, or subversive of, the constitution, its mandates, or laws of the United States or of this state, shall be displayed in this state.

**§8847-7. Ownership or Possession.** §2. The ownership or possession of any article or thing, the display of which is forbidden by this act, shall be unlawful.

**§8847-8. Penalty—Corporate, Etc. Officers.** §3. Any person who violates this act shall be guilty of a felony. An officer, trustee, director, agent or employee of a corporation or association who participates in the doing, or assists or acts for the corporation or association in the doing, of anything prohibited by this act, shall be guilty of a felony.

**§8847-9. Seizure and Destruction.** §4. Every article or thing owned or kept in violation of this act is hereby declared to be pernicious and dangerous to the public welfare and subject to be searched for, seized, forfeited and destroyed.

**§8847-10. Foreign Flags Excepted.** §5. Nothing in this act shall apply to the ownership, possession or display of flags, banners, standards, insignia, badges or emblems of any nation having accredited representatives in the United States or in its territories or possessions; nor shall this act apply to historical museums of recognized standing.

## FOOD, ETC.

### Selling Poison Without Label, and Recording the Same.

**§8848. Labeling Drugs.** §255. Every person who, in putting up any drug, medicine, or food, or preparation used in medical practice, or making up any prescription, or filling any order for drugs, medicines, food or preparation shall put any untrue label, stamp or other designation of contents upon any box, bottle or other package containing a drug, medicine, food or preparation used in medical practice, or substitute or dispense a different article for or in lieu of any article prescribed, ordered, or demanded, or put up a greater or less quantity of any ingredient specified in any such prescription, order or demand than that prescribed, ordered, or demanded, or otherwise deviate from the terms of the prescription, order, or demand by substituting one drug for another, shall be guilty of a misdemeanor: Provided, however, That, except in the case of a physician's prescriptions, nothing herein contained shall be deemed or construed to prevent or impair or in any manner affect the right of an apothecary, druggist, pharmacist or other person to recommend the purchase of an article other than that ordered, required or demanded, but of a similar nature, or to sell such other article in place or in lieu of an article ordered, required or demanded, with the knowledge and consent of the purchaser. N.Y.P.C. §401.

In trial for manslaughter instruction that violation is misdemeanor is not error, *State v. Takano* 94 W. 119.

**§8849. Labeling Poison.** §256. It shall be unlawful for any person to sell at retail or furnish any of the poisons named in the schedules hereinafter set forth, without affixing or causing to be affixed to the bottle, box, vessel or package, a label containing the name of the article and the word "poison" distinctly shown, with the name and place of business of the seller, all printed in red ink, together with the name of such poison printed or written thereon in plain, legible characters, which schedules are as follows, to-wit:

Schedule "A." Arsenic, cyanide of potassium, hydrocyanic acid, cocaine, morphine, strychnia and all other poisonous vegetable alkaloids and their salts, oil of bitter almonds, containing hydro-cyanic acid, opium and its preparations, except paragoric and such others as contain less than two grains of opium to the ounce.

Schedule "B." Aconite, belladonna, cantharides, colchicum, conium, cotton root, digitalis, ergot, hellebore, henbane, phytolacca, strophanthus, oil of tansy, veratrum viride, and their pharmaceutical preparations, arsenical solu-



tions, carbolic acid, chloral hydrate, chloroform, corrosive sublimate, creosote, croton oil, mineral acids, oxalic acid, paris green, salts of lead, salts of zinc, white hellebore or any drug, chemical or preparation which, according to standard works on medicine or materia medica, is liable to be destructive to adult human life in quantities of sixty grains or less. Every person who shall dispose of or sell at retail or furnish any poisons included under schedule A shall, before delivering the same, make or cause to be made an entry in a book kept for that purpose, stating the date of sale, the name and address of the purchaser, the name and the quantity of the poison, the purpose for which it is represented by the purchaser to be required and the name of the dispenser, such book to be always open for inspection by the proper authorities, and to be preserved for at least five years after the last entry. He shall not deliver any of said poisons to any minor, intoxicated person, or person known to be of unsound mind, or to any person without satisfying himself that the purchaser is aware of its poisonous character and that the said poison is to be used for a legitimate purpose. The foregoing portions of this section shall not apply to the dispensing of medicines, or poisons, on physicians' prescriptions. Wholesale dealers in drugs, medicines, pharmaceutical preparations or chemicals shall affix or cause to be affixed to every bottle, box, parcel or outer enclosure of an original package containing any of the articles enumerated under said schedule A, a suitable brand in red ink with the word "poison" upon it. Every person who shall violate any of the provisions of this section shall be guilty of a misdemeanor. N.Y.P.C. §402.

**§8850. Narcotic Drugs. §257.** It shall be unlawful for any person to sell, furnish or dispose of any opium, morphine, alkaloid-cocaine, or alpha or beta eucaine, or any derivative, mixture or preparation of any of them, except upon the signed prescription of a physician duly licensed under the laws of this state, which prescription shall be retained by the person dispensing the same, shall be filled but once, and of which no copy shall be taken by any person. The person dispensing the same shall at the time thereof indorse on the back of such prescription the name and street and house number of the person to whom dispensed; and the proprietor or manager of the store where dispensed shall keep all such prescriptions in a permanent file, separate from all other prescriptions, in his place of business for the period of two years after the same shall have been dispensed, and shall at any time allow the same to be inspected, and copies thereof to be made by any peace officer, the prosecuting attorney of the county where sold, or any authorized inspector of drugs: Provided, That nothing herein contained shall prohibit any manufacturer or licensed druggist from selling or delivering any of the drugs named to a person known to be a licensed physician or licensed druggist, nor prohibit a physician from dispensing the same in good faith to his patients, nor prohibit the sale of patent or proprietary medicines containing opium or morphine, in combination or compound with other active elements wherein the dose of opium is less than one-quarter grain, or the dose of morphine is less than one-twentieth grain. Every person who shall violate any of the provisions of this section shall be guilty of a gross misdemeanor. N.Y.P.C. §405a.

Selling dry morphine instead of solution as prescribed establishes crime of selling without prescription—evidence of intent—expert testimony, *State v. Smith* 103 W. 267.

**§8851. Fraudulent Prescription. §258.** Every physician who shall sell or give to or prescribe for any person any opium, morphine, alkaloid cocaine, or alpha or beta eucaine, or any derivative, mixture or preparation of any of them, or any intoxicating liquor, except to a patient believed in good faith to require the same for medicinal use, and in quantities proportioned to the needs of such patient, shall be guilty of a gross misdemeanor.

Physicians, regulations and penalties §3737.

**§8852. Presenting Fraudulent Prescription. §259.** Every person who shall falsely make, forge or alter, or, knowing the same to have been falsely made, forged or altered, shall present to any druggist a physician's prescription with intent by means thereof to procure from such druggist any opium,

morphine, alkaloid cocaine, or alpha or beta eucaine, or any derivative, mixture or preparation of any of them, or any intoxicating liquor, shall be guilty of a misdemeanor.

**§8857. Poisoning Food.** §264. Every person who shall wilfully mingle poison in any food, drink or medicine intended or prepared for the use of a human being, and every person who shall wilfully poison any spring, well or reservoir of water, shall be punished by imprisonment in the state penitentiary for not less than five years or by a fine of not less than one thousand dollars. Minn. C. '05 §5175.

Poisoning food, prior act §9131-88.

### FORCIBLE ENTRY AND DETAINER.

**§8858. Forcible Entry and Detainer.** §306. Every person who shall unlawfully use, or encourage or assist another in unlawfully using, any force or violence in entering upon or detaining any lands or other possessions of another; and every person who, having removed or been removed therefrom pursuant to the order or direction of any court, tribunal or officer, shall afterwards return to settle or reside unlawfully upon, or take possession of, such lands or possessions, shall be guilty of a misdemeanor. N.Y.P.C. §§465-6; Minn. C. '05 §5023

### FORGERY.

#### Forgery.

**§3859. Forgery—First Degree.** §331. Every person who, with intent to defraud, shall forge any writing or instrument by which any claim, privilege, right, obligation or authority, or any right or title to property, real or personal, is or purports to be, or upon the happening of some future event may be, evidenced, created, acknowledged, transferred, increased, diminished, encumbered, defeated, discharged or affected, or any request for the payment of money or delivery of property or any assurance of money or property, or any writing or instrument for the identification of any person, or any public record or paper on file in any public office, or any certified or authenticated copy of such record or paper, or any entry in any public or private record of account, or any judgment, decree, order, mandate, return, writ or process of any court, tribunal, judge, justice of the peace, commissioner or magistrate, or the official return or report of, or a license issued by, any public officer, or any pleading, demurrer, motion, affidavit, appearance, notice, cost-bill, statement of facts, bill of exceptions or proposed statement of facts or bill of exceptions in any action or proceeding whether pending or not, or the draft of any bill or resolution that has been presented to either house of the legislature of this state, whether engrossed or not, or the great seal of this state, the seal of any public officer, court, notary public or corporation, or any public seal authorized or recognized by the laws of this or any other state or government, or any impression of any such seal; or shall forge or counterfeit any coin or money of any state or government, or any bank or treasury bill, any note or postage or revenue stamp; or who, without authority shall make or engrave any plate in the form or similitude of any writing, instrument, seal, coin, money, stamp or thing which may be the subject of forgery, shall be guilty of forgery in the first degree, and shall be punished by imprisonment in the state penitentiary for not more than twenty years. N.Y.P.C. §§509, 511; Minn. C.'05 §5048.

Charge need not name person defrauded, 88 Minn. 301, 92 N. W. 980.  
State v. Thomas 102 W. 564.

Charge when instrument lost, etc. §9287.

Writing held not to require extrinsic evidence of its use, State v. Smith 77 W. 441.

Court may fix minimum sentence valid for five years, In re Blystone 75 W. 286.

Crime may be double and include uttering, etc., under §8863, State v. McBride 72 W. 390.

Essential elements are intent to defraud and forgery, 76 Minn 211; 78 N. W. 1042;

False assumption of authority is not forgery, 28 Minn. 52, 9 N. W. 28.

Alteration must be material, 27 Minn. 315, 7 N. W. 262.

Alteration of satisfied mortgage forgery, 43 Minn. 196, 45 N. W. 152; Inserting description in chattel mortgage, 43 Minn. 196, 45 N. W. 152; changing initial in name to contract, 60 Minn 1, 61 N. W. 816; false entries in account books by person employed to keep 67 Minn. 176, 69 N. W. 815.



Ownership of money paid out on false check immaterial under former law, State v. Pilling 53 W. 464.

Copy of forged draft sufficient—alteration may be shown in charge of uttering, White v. Territory 1 W. 279.

Information charging making and uttering instrument is not double, State v. Newton 9 W. 373.

Uttering forged draft is offense, State

v. Harding 20 W. 556.

Indorsing name of payee on county warrant or uttering such warrant is forgery, State v. Barkuloo 18 W. 52.

"Other instrument in writing" does not include statement of indebtedness from one person to another, State v. Heaton 17 W. 310.

Not necessary to set forth copy of forged instrument, State v. Wright 9 W. 96.

**§8860. — False Certificate to Certain Instruments.** §332. Every officer authorized to take a proof or acknowledgment of an instrument which by law may be recorded, who shall wilfully certify falsely that the execution of such instrument was acknowledged by any party thereto, or that the execution thereof was proved, shall be guilty of forgery in the first degree. N.Y.P.C. §510; Minn. C.'05 §5049.

**§8861. — Second Degree.** §333. Every person who, with intent to injure or defraud shall—

1. Make any false entry in any public or private record or account; or
2. Fail to make a true entry of any material matter in any public or private record or account; or

3. Forge any letter or written communication or copy or purported copy thereof, or send or deliver, or connive at the sending or delivery of any false or fictitious telegraph message or copy or purported copy thereof, whereby or wherein the sentiments, opinions, conduct, character, purpose, property, interests or rights of any person shall be misrepresented or may be injuriously affected, or, knowing any such letter, communication or message or any copy or purported copy thereof to be false, shall utter or publish the same or any copy or purported copy thereof as true, shall be guilty of forgery in the second degree, and shall be punished by imprisonment in the state penitentiary for not more than five years, or by a fine of not more than five thousand dollars. N.Y.C.P. §§514-5; Minn. C. '05 §§5051.

**§8862. Falsely Indicating Person as Corporate Officer.** §334. The false making or forging of an instrument or writing purporting to have been issued by or in behalf of a corporation or association, state or government and bearing the pretended signature of any person therein falsely indicated as an agent or officer of such corporation, association, state or government, is forgery in the same degree as if that person were in truth such officer or agent of such corporation, association, state or government. N.Y.P.C. §519; Minn. C.'05 §5059.

**§8863. Uttering Forged Instruments, Coins, Etc...** §335. Every person who, knowing the same to be forged or altered, and with intent to defraud, shall utter, offer, dispose of or put off as true, or have in his possession with intent so to utter, offer, dispose of or put off any forged writing, instrument or other thing, the false making, forging or altering of which is punishable as forgery, shall be guilty of forgery in the same degree as if he had forged the same. Minn. C.'05 §5060.

Knowledge of falsity, uttering as true 88 Minn. 301, 92 N. W. 980.

with intent to defraud are essential elements, 65 Minn. 121, 67 N. W. 798; 67 Minn. 176, 69 N.W. 815; intent how shown, Minn. 422, 90 N. W. 787.

**§8864. Forgery by True Writings.** §336. Whenever the false making or uttering of any instrument or writing is forgery in any degree, every person who, with intent to defraud shall offer, dispose of or put off such an instrument or writing subscribed or endorsed in his own name or that of any other person, whether such signature be genuine or fictitious, under the pretense that such subscription or endorsement is the act of another person of the same name, or that of a person not in existence, shall be forgery in the same degree. N.Y.P.C. §522; Minn. C.'05 §5061.

**§8865. Misconduct in Signing a Petition.** §337. Every person who shall wilfully sign the name of another person or of a fictitious person, or for any consideration, gratuity or reward shall sign his own name to or withdraw his name from any referendum or other petition circulated in pursu-

ance of any law of this state or any municipal ordinance; or in signing his name to such petition shall wilfully subscribe to any false statement concerning his age, citizenship, residence or other qualification; to sign the same; or knowing that any such petition contains any such false or wrongful signature or statement, shall file the same, or put the same off with intent that it should be filed, as a true and genuine petition, shall be guilty of a misdemeanor.

**§8866. Forgery, Definitions.** §338. Within the provisions of this subdivision relating to forgery, a "written instrument," or a "writing," shall include an instrument partly written and partly printed or wholly printed with a written signature thereto, or any signature or writing purporting to be a signature of or intended to bind an individual, partnership, corporation or association or an officer thereof.

The words "forge," "forgery," "forged," and "forging," shall include false making, "counterfeiting" and the alteration, erasure or obliteration of a genuine instrument in whole or in part, the false making or counterfeiting of the signature of a party or witness, real or fictitious, and the placing or connecting together, with intent to defraud, of different parts or the whole of several genuine instruments.

A plate is in the "form and similitude," of the genuine instrument forged, if the finished parts of the engraving thereupon shall resemble or conform to the similar parts of the genuine instrument. Minn. C. '05 §5047.

## FRAUDS.

### Frauds.

**§8867. ~~False Personating~~ Another.** §363. Every person who shall falsely personate another, and in such assumed character shall—

1. Marry or pretend to marry or sustain the marriage relation towards another; or

2. Become bail or surety for a party in an action or special proceeding, civil or criminal, before a court or officer authorized to take such bail or surety; or

3. Confess a judgment; or

4. Subscribe, verify, publish, acknowledge or approve a written instrument which by law may be recorded, with intent that the same may be delivered or issued as true; or

5. Appear for arraignment, trial or judgment in any criminal proceeding; or

6. Do any other act in the course of any action or proceeding, wherein, if it were done by the person falsely personated such person might in any event become liable to an action or special proceeding, civil or criminal, or to pay a sum of money, or to incur a charge, forfeiture, or penalty, or whereby any benefit might accrue to the offender or to any other person—

Shall be punished by imprisonment in the state penitentiary for not more than ~~ten years~~ **N.Y.P.C. §562; Minn. G. '05 §5102.**

**False personation by physician, §3737.**

Other false pretenses by same conspirators may be shown—admission of co-defendant, State v. Craddick 61 W. 425.

Information need not negative exception, State v. King 49 W. 31.

This section and §8699 cover offense of attempting to secure money by certificate of deposit obtained in bunco game, State v. Riddell 33 W. 324.

Charge in the language of the statute is sufficient—description of bank note—reliance on false pretense not necessary to allege value of money, State v. Ryan 34 W. 597.

Proof of other crimes held error—col-

**§8868. Personating an Officer.** §364. Every person who shall falsely personate a public officer, civil or military, or a policeman, or a private

lecting money under advice of attorney, State v. Oppenheimer 41 W. 630.

Check or draft on bank without money—penalty, §8944.

Elements of crime—false note, State v. Phelps 41 W. 470.

Allegation of false pretense is sufficient if it appears that party was induced to part with his property on specified false pretenses, State v. Bokien 14 W. 403.

In trial of false pretenses by giving check without funds checks given other persons are not admissible, State v. Bokien 15 W. 403.



individual having special authority by law to perform an act affecting the rights or interests of another, or who, without authority shall assume any uniform or badge by which such an officer or person is lawfully distinguished, and in such assumed character shall do any act purporting to be official, whereby another is injured or defrauded, shall be guilty of a gross misdemeanor. N.Y.C.P. §565; Minn.'05 §5104.

**§8869. Use of False Permit or Diploma.** §365. Every person who shall conduct any business or perform any act under color of, or file for record with any public officer, any false or fraudulent permit, license, diploma or writing, or any permit, license, diploma or writing not lawfully belonging to such person, or who shall obtain any permit, license, diploma or writing by color or aid of any false representation, pretense, personation, token or writing, shall be guilty of a gross misdemeanor.

False pretense of banking, §268.

**§8870. Concealing Foreign Matter in Merchandise.** §366. Every person who, with intent to defraud, shall place or conceal any foreign substance in any barrel, bag, bale, box or other package containing any article of merchandise, shall be guilty of a gross misdemeanor.

**§8871. Obtaining Signature by False Pretense.** §367. Every person who, with intent to cheat or defraud another, shall designedly by color or aid of any false token or writing or other false pretense, representation or presentation, obtain the signature of any person to a written instrument, shall be punished by imprisonment in the state penitentiary for not more than five years or in the county jail for not more than one year, or by a fine of not more than one thousand dollars, or by both fine and imprisonment. N.Y.C.P. §567a; Minn. C'05 §5105.

**§8872. False Representation of Credit.** §368. Every person who, with intent thereby to obtain credit or financial rating, shall wilfully make any false statement in writing of his assets or liabilities to any person with whom he may be either actually or prospectively engaged in any business transaction or to any commercial agency or other person engaged in the business of collecting or disseminating information concerning financial or commercial ratings, shall be guilty of a misdemeanor.

**§8873. False Representation of Title.** §369. Every person who shall maliciously or fraudulently execute or file for record any instrument, or put forward any claim, by which the right or title of another to any real property is, or purports to be transferred, encumbered or clouded, shall be guilty of a gross misdemeanor.

**§8874. False Statement to Affect Market Price.** §370. Every person who, with intent to affect the market price of any security or property shall put off, circulate or publish any false or misleading writing, statement or intelligence, shall be guilty of a gross misdemeanor.

**§8875. Obtaining Employment by False Certificate.** §371. Every person who shall obtain employment or appointment to any office or place of trust, by color or aid of any false or forged letter or certificate of recommendation, shall be guilty of a misdemeanor. N.Y.P.C. §570; Minn. C.'05 §5107.

**§8876. Fraud by Employment Agent.** §372. Every employment agent or broker who, with intent to influence the action of any person thereby, shall misstate or misrepresent verbally, or in any writing or advertisement, any material matter relating to the demand for labor, the conditions under which any labor or service is to be performed, the duration thereof or the wages to be paid therefor, shall be guilty of a misdemeanor.

**§8877. Frauds on Inn-Keeper.** §373. Every person who shall obtain any food, lodging or accommodation at any hotel, restaurant boarding house or lodging house without paying therefor, with intent to defraud the proprietor or manager thereof, or who shall obtain credit at a hotel, restaurant, boarding house or lodging house by color or aid of any false pretense, repre-

sentation, token or writing, or who after obtaining board, lodging or accommodation at a hotel, restaurant, boarding house or lodging house, shall abscond or surreptitiously remove his baggage therefrom without paying for such food, lodging or accommodation, shall be guilty of a misdemeanor.

**§8878. Badges, Etc., Improper Use.** §374. Every person who shall wilfully wear the badge, button, insignia or rosette of any military order or of any secret order or society, or any similitude thereof; or who shall use any such badge, button, insignia or rosette to obtain aid or assistance, or any other benefit or advantage, unless he shall be entitled to so wear or use the same under the constitution, by-laws, rules and regulations of such order or society, shall be guilty of a misdemeanor. Minn. C.'05 §5167.

**§8879. Fraudulent Claim to Public Officer.** §375. Every person who, with the intent to defraud shall knowingly present for audit, allowance or payment to any officer or board of the state or of any county, city, town or school district, authorized to audit, allow or pay bills, claims or charges, any false or fraudulent claim, account, writing or voucher or any bill, account or demand containing false or fraudulent charges, items or claims, shall be guilty of a gross misdemeanor.

**§8880. Fraud by Bailee of Animal.** §376. Every person who shall obtain from another the possession or use of any horse or other draft animal or any vehicle or automobile, without paying therefor, with intent to defraud the owner thereof, or who shall obtain the possession or use thereof by color or aid of any false or fraudulent representation, pretense, token or writing, or shall obtain credit for such use by color or aid of any false or fraudulent representation, pretense, token or writing; or who having hired property, shall recklessly, wilfully, wantonly or by gross negligence injure or destroy or cause, suffer, allow or permit the same, or any part thereof, to be injured or destroyed; or who, having hired any horse or other draft animal upon an understanding or agreement that the same shall be ridden or driven a specified distance or to a specified place, shall wilfully and fraudulently ride or drive or cause, permit or allow the same to be ridden or driven a longer distance, or to a different place, shall be guilty of a misdemeanor.

**§8881. Destruction or Removal of Mortgaged Property.** §377. Every person being in possession thereof, who shall remove, conceal or destroy or connive at or consent to the removal, concealment or destruction of any personal property or any part thereof, upon which a mortgage, lien, conditional sales contract or lease exists, in such a manner as to hinder, delay or defraud the holder of such mortgage, lien or conditional sales contracts or such lessor, or who with intent to hinder, delay or defraud the holder of such mortgage, lien or conditional sales contract, or such lessor, shall sell, remove, conceal or destroy or connive at or consent to the removal, concealment or destruction of such property, shall be guilty of a gross misdemeanor.

In any prosecution under this section any allegation containing a description of the mortgage, lien, conditional sales contract or lease by reference to the date thereof and names of the parties thereto, shall be sufficiently definite and certain.

Sale of personalty liened, §8946; mort cealment and removal" good charge—re-gages, §9746. cording not necessary — sale by accused,

Description of vendor and vendee—"con- State v. Brummett 98 W. 182.

**§8882. Mock Auctions.** §378. Every person who shall obtain any money or property from another or shall obtain the signature of another to any writing the false making of which would be forgery, by color or aid of any false or fraudulent sale of property or pretended sale of property by auction, or by any of the practices known as mock auction, shall be punished by imprisonment, in the state penitentiary for not more than five years or in the county jail for not more than one year, or by a fine of not more than one thousand dollars, or by both fine and imprisonment.

Every person who shall buy or sell or pretend to buy or sell any goods, wares or merchandise, exposed to sale by action, if an actual sale, purchase and change of ownership therein does not thereupon take place, shall be guilty of a misdemeanor. N.Y.P.C. §574.

Auctioneers, act, §193.



**§8883. Fraudulent Removal of Property.** §379. Every person who, with intent to defraud a prior or subsequent purchaser thereof, or prevent any of his property being made liable for the payment of any of his debts, or levied upon by an execution or warrant of attachment, shall remove any of his property, or secrete, assign, convey or otherwise dispose of the same, or with intent to defraud a creditor shall remove, secrete, assign, convey or otherwise dispose of any of his books, or accounts, vouchers or writings in any way relating to his business affairs, or destroy, obliterate, alter or erase any of such books of account, accounts, vouchers or writing or any entry, memorandum or minute therein contained, shall be guilty of a gross misdemeanor. N.Y.P.C. §587.

**§8884. Receiving Fraudulent Conveyance.** §380. Every person who shall receive any property or conveyance thereof from another, knowing that the same is transferred or delivered to him in violation of, or with the intent to violate section 379 of this act, shall be guilty of a misdemeanor.

**§8885. Fraud in Assignment for Benefit of Creditors.** §381. Every person who, having made, or being about to make, a general assignment of his property to pay his debts, shall by color or aid of any false or fraudulent representation, pretense, token or writing induce any creditor to participate in the benefits of such assignments, or to give any release or discharge of his claim or any part thereof, or shall connive at the payment in whole or in part of any false, fraudulent or fictitious claim, shall be guilty of a gross misdemeanor.

**Supplementary—AN ACT relating to untrue, deceptive and misleading advertisements, and providing a penalty for the violation thereof.** Approved March 6, 1913. Laws 13 ch 34.

**§8886. Fraudulent Advertising.** §1. Any person, firm, corporation or association who, with intent to sell or in any wise dispose of merchandise, securities, service, or anything offered by such person, firm, corporation or association, directly or indirectly, to the public for sale or distribution, or with intent to increase the consumption thereof, or to induce the public in any manner to enter into any obligation relating thereto, or to acquire title thereto, or an interest therein, makes, publishes, disseminates, circulates, or places before the public, or causes, directly or indirectly, to be made, published, disseminated, circulated, or placed before the public in this state, in a newspaper or other publication, or in the form of a book, notice, hand-bill, poster, bill, circular, pamphlet, or letter, or in any other way, an advertisement of any sort regarding merchandise, securities, service, or anything so offered to the public, which advertisement contains any assertion, representation or statement of fact which is untrue, deceptive or misleading, shall be guilty of a misdemeanor; Provided, That the provisions of this act shall not apply to any owner, publisher, agent, or employe of a newspaper for the publication of such advertisement published in good faith and without knowledge of the falsity thereof.

Falsely stating original with depreciated price not an offense. *State v. Massey* 95 W. 1.

**AN ACT making the drawing, or uttering, of a bank check or draft for the payment of money, without funds or credit to meet the same upon presentation, a larceny, and prescribing a penalty therefor.** Approved March 18, 1915. Laws '15 p. 460.

**§8887. Drawing on Bank, in Excess of Funds—"Credit" Defined—Evidence of Intent.** §1. Any person who shall with intent to defraud make, or draw, or utter, or deliver to another person any check, or draft, on a bank or other depository for the payment of money, knowing at the time of such drawing, or delivery, that he has not sufficient funds in, or credit with said bank or depository, to meet said check, in full upon its presentation, shall be guilty of larceny. The word "credit" as used herein shall be construed to mean an arrangement or understanding with the bank for the payment of such check or draft, and the uttering or delivery of such a check or draft to another person without such fund or credit to meet the same shall be prima facie evidence of an intent to defraud.

**AN ACT** making it unlawful for any person to falsely represent himself or herself as blind, deaf, dumb, crippled, or otherwise physically defective and providing a penalty for the violation thereof. Approved March 15, 1915. Laws '15 p 236.

**§8888. False Representation of Physical Defects.** §1. That it shall be unlawful for any person to falsely represent himself or herself as blind, deaf, dumb, crippled or otherwise physically defective for the purpose of obtaining money or other thing of value or making sales of any character of personal property and any person so falsely representing himself or herself as blind, deaf, dumb, crippled or otherwise physically defective and securing aid or assistance on account of such representations shall be deemed guilty of a misdemeanor.

**AN ACT** to prohibit the removal, defacement, covering, alteration, or destruction of the manufacturers serial number or any other distinguishing number or identification mark on motor vehicles and motor boats and providing penalties for a violation thereof. Approved March 10, 1917. Laws 17 p 218.

**§8889. Removal or Destruction of Identifying Numbers on Motor Vehicles and Boats.** §1. Whoever knowingly buys, sells, receives, disposes of, conceals, or has in his possession any motor vehicle or motor boat from which the manufacturer's serial number or any other distinguishing number or identification mark has been removed, defaced, covered, altered or destroyed for the purpose of concealment or misrepresenting the identity of the said motor vehicle or motor boat shall be guilty of a gross misdemeanor.

Taking or riding in automobile §240.

**§8890. Possession Prima Facie Evidence of Guilt.** §2. In any prosecution under the provisions of section 1 of this act evidence that any person has, or at the time of his arrest charged with the violation of said section 1 had in his possession any motor vehicle or motor boat from which the manufacturer's serial number or numbers or other distinguishing number or identification mark has been removed, defaced, covered, altered or destroyed shall constitute prima facie proof of the guilt of such person.

#### Fraudulent Injury of Vessel.

**§8891. Vessel, Wilful Destruction of.** §382. Every person who shall wreck, burn, sink, scuttle or otherwise injure or destroy a vessel or its cargo, or wilfully permit the same to be done, with the intent to prejudice or defraud an insurer or any other person, or who shall fit out a vessel, or shall load any cargo on board thereof with intent to permit or cause the same to be wrecked, sunk or otherwise injured or destroyed, and thereby defraud or prejudice an insurer or other person, shall be punished by imprisonment in the state penitentiary for not more than twenty years. N.Y. P.C. §§575-6; Minn. C.'05 §5112.

**§8892. Manifest, Invoice, Etc., Making False.** §383. Every person who shall prepare, make or subscribe a false or fraudulent manifest, invoice, bill of lading, ship's register, or protest, with intent to defraud another, shall be punished by imprisonment in the state penitentiary for not more than five years or by a fine of not more than one thousand dollars, or by both. N.Y. P.C. §577; Minn. C.'05 §5113.

Carrier, etc., issuing false bill etc. §8901.

**§8893. Destruction of Insured Property.** §384. Every person who, with intent to defraud or prejudice the insurer thereof, shall wilfully injure or destroy any property not specified or included hereinbefore in this subdivision, which is insured at the time against loss or damage by fire or other casualty [casualty] shall be punished by imprisonment in the state penitentiary for not more than ten years, or by a fine of not more than five thousand dollars, or by both. Minn. C.'05 §5114.

Later provision, §2967.



## False Weights and Measures.

**§8894. Weights and Measures, Using False.** §385. Every person who shall injure or defraud another by using, with knowledge that the same is false, a false weight, measure or other apparatus for determining the quantity of any commodity or article of merchandise, or by knowingly misrepresenting the quantity thereof bought or sold; or who shall retain in his possession any weight or measure, knowing it to be false, unless it appears beyond a reasonable doubt that it was so retained without intent to use it or permit it to be used in violation of the foregoing provisions of this section, shall be guilty of a gross misdemeanor. N.Y.P.C. §580-1; Minn. C.'05 §5115.

## Fraud in the Management of Corporations.

**§8895. Fraud in Stock Subscription.** §386. Every person who shall sign the name of a fictitious person to any subscription for or any agreement to take stock in any corporation existing or proposed, and every person who shall sign to any such subscription or agreement the name of any person, knowing that such person does not intend in good faith to comply with the terms thereof, or upon any understanding or agreement that the terms of such subscription or agreement are not to be complied with or enforced, shall be guilty of a gross misdemeanor. Minn. C.'05 §5116.

False banking, §268; false certification of checks, §294.

**§8896. Fraudulent Issue of Stock, Scrip, Etc.,** §387. Every officer, agent or other person in the service of a joint stock company or corporation, domestic of [or] foreign, who willfully and knowingly with intent to defraud, shall—

1. Sell, pledge or issue or cause to be sold, pledged or issued, or sign or execute or cause to be signed or executed, with intent to sell, pledge or issue, or cause to be sold, pledged or issued, any certificate or instrument purporting to be a certificate or evidence of ownership of any share or shares of such company or corporation, or any conveyance or encumbrance of real or personal property, contract, bond, or evidence of debt, or writing purporting to be a conveyance or encumbrance of real or personal property, contract, bond or evidence of debt of such company or corporation, without being first duly authorized by such company or corporation, or contrary to the charter or laws under which such company or corporation exists, or in excess of the power of such company or corporation, or of the limit imposed by law or otherwise upon its power to create or issue stock or evidence of debt; or,

2. Reissue, sell, pledge or dispose of, or cause to be reissued, sold, pledged or disposed of, any surrendered or canceled certificate or other evidence of the transfer of ownership of any such share or shares;

Shall be punished by imprisonment in the state penitentiary for not more than ten years, or by a fine of not more than five thousand dollars, or by both. N.Y.P.C. §591; Minn. C.'05 §5117.

Premature building and loan stock, §4619.

**§8897. Insolvent Bank Receiving Deposit.** §388. Every owner, officer, stockholder, agent or employe of any person, firm, corporation or association engaged, wholly or in part, in the business of banking or receiving money or negotiable paper or securities on deposit or in trust, who shall accept or receive, with or without interest, any deposit, or who shall consent thereto or connive thereat, when he knows or has good reason to believe that such person, firm, corporation or association is unsafe or insolvent, shall be punished by imprisonment in the state penitentiary for not more than ten years, or by a fine of not more than ten thousand dollars. Minn. C.'05 §5118.

Receiving deposit when insolvent, §331. Officer guilty if by reasonable diligence

Aider and abettor section does not apply, in his duties he could have known of the insolvent condition, State v. Welty, 65 W. State v. Furth 82 W. 665.

Authorizes the conviction of the president of a bank for the receipt of deposits 244.

by the cashier when the president was absent, if he knew the bank was insolvent, L. '93 271 did not apply to private bankers, State v. Youngbluth 60 W. 383.

State v. Welty, 65 W. 244. Law valid though constitution creates double liability. State v. Olson 35 W. 149.

**§8898. Corporation Doing Business Without License.** §389. Every corporation, whether domestic or foreign, and every person representing or pretending to represent such corporation as an officer, agent or employe thereof, who shall transact, solicit or advertise for any business in this state, before such corporation shall have obtained from the officer lawfully authorized to issue the same, a certificate that such corporation is authorized to transact business in this state, shall be guilty of a gross misdemeanor.

**§8899. False Report of Corporation.** §390. Every director, officer or agent of any corporation or joint stock association, and every person engaged in organizing or promoting any enterprise, who shall knowingly make or publish or concur in making or publishing any written prospectus, report, exhibit or statement of its affairs or pecuniary condition, containing any material statement that is false or exaggerated, shall be punished by imprisonment in the state penitentiary for not more than ten years, or by a fine of not more than five thousand dollars.

False entry, etc., in banking business, §306.

See insurance and other subjects.

**§8900. Warehouseman or Carrier Refusing to Issue Receipt.** §391. Every person or corporation, and every officer, agent and employe thereof, receiving any goods, wares or merchandise, for sale or on commission, for storage, carriage or forwarding, who, having an opportunity to inspect the same, shall fail or refuse to deliver to the owner thereof a receipt duly signed, bearing the date of issuance, describing the goods, wares or merchandise received and the quantity, quality and condition thereof, and specifying the terms and conditions upon which they are received, shall be guilty of a misdemeanor.

**§8901. Fictitious Bill of Lading and Receipt.** §392. Every person or corporation engaged wholly or in part in the business of a common carrier or warehouseman, and every officer, agent or employe thereof, who shall issue any bill of lading, receipt or other voucher by which it shall appear that any goods, wares or merchandise have been received by such carrier or warehouseman, unless the same have been so received and shall be at the time actually under his control, or who shall issue any bill of lading, receipt or voucher containing any false statement concerning any material matter, shall be guilty of a gross misdemeanor. But no person shall be convicted under this section for the reason that the contents of any barrel, box, case, cask or other closed vessel or package mentioned in the bill of lading, receipt or voucher did not correspond with the description thereof in such instrument, if such description corresponds substantially with the mark on the outside of such barrel, box, case, cask, vessel or package, unless it appears that the defendant knew that such marks were untrue. N.Y.P.C. §629; Minn. C'05 §5121.

Making false invoice, etc. §8892.

**§8902. Warehouseman Fraudulently Mixing Goods.** §393. Every person mentioned in section 392 of this act, who shall fraudulently mix or tamper with any goods, wares or merchandise under his control, shall be guilty of a gross misdemeanor.

**§8903. Duplicate Receipt.** §394. Every person mentioned in section 392 of this act, who shall issue any second or duplicate receipt or voucher of the kind specified in said section, while a former receipt or voucher for the goods, wares or merchandise specified in such second receipt is outstanding and uncanceled, without writing across the face of the same the word "Duplicate," in a plain and legible manner, shall be guilty of a misdemeanor. N.Y.P.C. §631; Minn. C'05 §5123.

**§8904. Bill of Lading or Receipt Must be Canceled.** §395. Each person mentioned in section 392 of this act who shall deliver to another any goods, wares or merchandise for which a bill of lading, receipt or voucher has been issued, unless such bill of lading, receipt or voucher is surrendered and canceled or a lawful and sufficient bond or undertaking is given therefor at the time of such delivery, or unless, in case of a partial delivery, a memor-



andum thereof is endorsed upon such bill of lading, receipt or voucher, shall be guilty of a misdemeanor.

Warehousemen, etc., regulations—penalties, §7202-6.

**§8905. Sale of Tickets by Carriers.** §396. It shall be the duty of every person or corporation engaged wholly or in part in the business of carrying passengers for hire, to provide every agent authorized to sell its passage tickets in this state, with a certificate of his authority, attested by its seal and the signature of its manager, secretary or general passenger agent, which shall contain a designation of the place of business at which such authority shall be exercised.

Every person and every corporation or association, and every officer, agent or employe thereof who shall sell, exchange or transfer, or have in his possession with intent to sell, exchange or transfer, or maintain, conduct or operate any office or place of business for the sale, exchange or transfer of any passage ticket or pass or part thereof, or any other evidence of a right to travel upon any railroad or boat, whether the same be owned or operated within or without the limits of this state, in any place except his place of business, or within such place of business without having rightfully in his possession and posted in a conspicuous place therein the certificate of authority hereinabove provided for, shall be guilty of a misdemeanor.

Redemption by railroads, prior act §5717. Failure to cancel tickets, §8950.

**§8906. Redemption of Tickets.** §397. Every person or corporation engaged wholly or in part in the business of carrying passengers for hire in this state, and every authorized ticket agent thereof, to whom there shall be presented by the holder thereof, within one year after its expiration, any passage ticket or part thereof, or other evidence of right to travel, wholly or in part upon the railroad or boat of such person or corporation, which shall be wholly or partially unused, who shall fail to redeem the same within three days after presentation, upon the following terms, to-wit:

1. When wholly unused, for the price paid therefor; and
2. When partially unused, for the price paid therefor, less the regular toll or charge for the passage had;

Shall be punished by a fine of not more than five hundred dollars, and in addition thereto shall forfeit to the holder of such ticket or part thereof or other evidence of a right to travel, three times the redeemable value thereof.

**§8907. Collecting for Benefit Without Authority.** §422. Every person who shall sell a ticket to any ball, benefit or entertainment, or ask or receive any subscription or promise thereof, for the benefit or pretended benefit of any person, association or order, without being duly authorized thereto by the person, association or order for whose benefit or pretended benefit the same is done, shall be guilty of a misdemeanor.

**§8908. Labor Representative, Bribery of.** §424. Every person who shall give, offer or promise, directly or indirectly, any compensation, gratuity or reward to any duly constituted representative of a labor organization, with intent to influence him in respect to any of his acts, decisions or other duties as such representative, or to induce him to prevent or cause a strike by the employes of any person or corporation, shall be guilty of a gross misdemeanor.

**§8909. —Receiving Bribe.** §425. Every person who, being the duly constituted representative of a labor organization, shall ask or receive, directly or indirectly, any compensation, gratuity or reward, or any promise thereof, upon any agreement or understanding that any of his acts, decisions or other duties as such representative, or any act to prevent or cause a strike of the employes of any person or corporation shall be influenced thereby, shall be guilty of a gross misdemeanor.

**§8910. Corruptly Influencing Agent.** §426. Every person who shall give, offer or promise, directly or indirectly, any compensation, gratuity or reward to any agent, employe or servant of any person or corporation, with intent to influence his action in relation to his principal's, employer's or master's business, shall be guilty of a gross misdemeanor.

Order of court returning money and papers to defendant which were taken by search, held error, *State ex rel. Murphy v. Brown* 83 W. 100.

**§8911. Grafting by Employee.** §427. Every agent, employe or servant of any person or corporation who shall ask or receive, directly or indirectly, any compensation, gratuity or reward, or any promise thereof, upon any agreement or understanding that he shall act in any particular manner in connection with his principal's, employer's or master's business; or who, being authorized to purchase or contract for materials, supplies or other articles or to employ servants or labor for his principal, employer or master, shall ask or receive, directly or indirectly, for himself or another, a commission, discount, bonus or promise thereof from any person with whom he may deal in relation to such matters, shall be guilty of a gross misdemeanor.

**Grafting regarding public officers** §9060.

**§8912. Fraud in Making Plate, Etc.** §428. Every person who shall make, sell or offer to sell or dispose of, or have in his possession with intent to sell or dispose of any metal article marked, stamped or branded with the words "sterling," "sterling silver," or "solid silver," unless nine hundred twenty-five one-thousandths of the component parts of the metal of which such article and all parts thereof is manufactured is pure silver, shall be guilty of a gross misdemeanor.

**§8913. —Marking "Coin Silver," Etc.** §429. Every person who shall make, sell or offer to sell or dispose of, or have in his possession with intent to dispose of any metal article marked, stamped or branded with the words "coin," or "coin silver," unless nine hundred one-thousandths of the component parts of the metal of which such article and all parts thereof is manufactured, is pure silver, shall be guilty of a gross misdemeanor.

**§8914. —Use of Word "Sterling," on Mounting.** §430. Every person who shall make, sell, offer to sell or dispose of, or have in his possession with intent to sell or dispose of, any article comprised of leather, shell, ivory, celluloid, pearl, glass, porcelain, pottery, steel or wood, to which is applied or attached a metal mounting marked, stamped or branded with the words "sterling," or "sterling-silver," unless nine hundred twenty-five one-thousandths of the component parts of the metal of which such metal mounting is manufactured is pure silver, shall be guilty of a gross misdemeanor.

**§8915. —Use of Words "Coin Silver," on Mounting.** §431. Every person who shall make, sell, offer to sell or dispose of, or have in his possession with intent to sell or dispose of, any article comprised of leather, shell, ivory, celluloid, pearl, glass, porcelain, pottery, steel or wood, to which is applied or attached a metal mounting marked, stamped or branded with the words "coin" or "coin silver," unless nine hundred one-thousandths of the component parts of the metal of which such metal mounting is manufactured is pure silver, shall be guilty of a gross misdemeanor.

**§8916. —Articles Made of Gold.** §432. Every person who shall make, sell, offer to sell or dispose of, or have in his possession with intent to sell or dispose of, any article constructed wholly or in part of gold, or of an alloy of gold, and marked, stamped or branded in such manner as to indicate that the gold or alloy of gold in such article is of a greater degree or carat of fineness, by more than one carat, than the actual carat or fineness of such gold or alloy of gold, shall be guilty of a gross misdemeanor.

**§8917. "Marked, Stamped or Branded," Defined.** §433. An article shall be deemed to be "marked, stamped or branded" whenever such article, or any box, package, cover or wrapper in which the same is enclosed, encased or prepared for sale or delivery, or any card, label or placard with which the same may be exhibited or displayed, is so marked, stamped or branded.

**§8918. Vessel Bringing Foreign Convict.** §435. Every person who, being the master or commander of any vessel or boat arriving from a foreign country, shall knowingly bring into this state a person who has been or is a foreign convict of any offense, which, if committed in this state would be punishable under the laws thereof, shall be guilty of a misdemeanor.

**§8919. Performing Undedicated Play.** §438. Every person who, without the consent of the owner thereof, shall cause to be publicly performed any



dramatic composition, or dramatic musical composition commonly called an opera, or any substantial part thereof, which has been copyrighted under the laws of the United States, or shall knowingly participate in the performance or representation of any substantial part thereof, or knowingly sell a substantial copy of any substantial part thereof, shall be guilty of a misdemeanor.

§§8920-21. Soliciting "Tips." §§439-40. Repealed. L. '13 ch 15.

AN ACT making it a gross misdemeanor to fraudulently use the name of any fraternal society or any imitation thereof or without authority to solicit membership in such society or any imitation thereof or offering to sell, confer or communicate the secret work or pretended secret work of such society, or upon false representations as to membership therein to seek or obtain admission to any such society or lodge thereof, or to falsely claim membership in any such society or lodge. Approved March 10, 1911. Laws '11 p 155.

**§8922. Fraternal Societies, Fraud on—Penalty.** §1. 'Any person, firm, association, society, order or organization or any officer, agent, representative or employe thereof, or person acting or pretending to act on behalf thereof who in a newspaper or other publication published in this state, or in any letter, writing, circular paper, pamphlet or other writing or printed notice, matter or device without authority of the grand lodge hereinafter mentioned, fraudulently uses, or in any manner directly or indirectly aids in the use of the name or title of any secret fraternal association, society, order or organization which has had a grand lodge in this state for five (5) years, or any secret fraternal association, society, order or organization having as a necessary qualification to membership, membership in a secret fraternal society, order or organization under the jurisdiction of said grand lodge, or any imitation of such name or title or any name or title so nearly resembling it as to be calculated to deceive, or without such authority publishes, sells, lends, gives away, circulates or distributes any letter, writing, circular, paper, pamphlet or other written or printed notice, matter or device, or by word of mouth, directly or indirectly advertising for or soliciting members or applications for membership in such secret fraternal association, society, order or organization using or designated or claimed to be known by such title or imitation or resemblance thereof or who offers to sell or to confer or to communicate or to give information directly or indirectly where, how, of whom, or by what means any alleged or pretended secret work or any alleged or pretended secrets of such secret fraternal association, society, order or organization or of any alleged or pretended association, society, order or organization designated or claimed to be known by such title or imitation or resemblance thereof can or may be obtained conferred or communicated, or any person who falsely represents himself to be a member of any such secret fraternal association, society, order or organization or any person who upon false representations as to membership therein seeks or obtains admission into any such secret fraternal association, society, order or organization shall be guilty of a gross misdemeanor.

**§8923. Production of Pretended Heir.** §122. Every person who shall fraudulently or falsely pretend that any infant child was born of a parent whose child is or would be entitled to inherit real property or to receive any personal property, or who shall falsely represent himself or another to be a person entitled to an interest or share in the estate of a deceased person as executor, administrator, husband, wife, heir, legatee, devisee, next of kin or relative of such deceased person, shall be punished by imprisonment in the state penitentiary for not more than ten years. N.Y.P.C. §151; Minn. C. '05 §4857.

**§8924. Substitution of Child.** §123. Every person to whom a child has been confided for nursing, education or any other purpose, who, with intent to deceive a person, guardian or relative of such child, shall substitute or produce to such parent, guardian or relative, another child or person in the place of the child so confided, shall be punished by imprisonment in the

state penitentiary for not more than ten years. N.Y.P.C. §152; Minn. C. '05 §4858.

**§8925. Suit in Name of Another. §124.** Every person who shall institute or prosecute any action or other proceeding in the name of another, without his consent and contrary to law, shall be guilty of a gross misdemeanor. Minn. C. '05 §4860.

## GAMBLING.

### Gambling.

**§8926. Gambling, Conducting. §217.** Every person who shall open, conduct, carry on or operate, whether as owner, manager, agent, dealer, clerk, or employe, and whether for hire or not, any gambling game or game of chance, played with cards, dice, or any other device, or any scheme or device whereby any money or property, or any representative of either, may be bet, wagered or hazarded upon any chance, or any uncertain or contingent event, shall be a common gambler, and shall be punished by imprisonment in the state penitentiary for not more than five years.

Constitution prohibiting lotteries, Const., art. 2, §24.

Race track gambling, §9131-47; nickel-in-the-slot machines, §9131-52; house a nuisance, §9131-79; search warrants for apparatus, §9358.

Charging as "owner" and "common gambler" not fatal—section in two parts—need not charge money was bet, State v. Robey 74 W. 562.

Conviction for conducting stud poker game sustained, State v. Moser 94 W. 465.

Information must allege capacity of person charged, State v. Hardwick, 63 W. 35.

Boards and lists for horse races are not gambling devices, 39 Minn. 153; 39 N. W. 305; "stock clock" is gambling device, 49 Minn. 443, 52 N. W. 42.

Description as "nickel-in-the-slot machine" sufficient, 84 Minn. 357, 87 N. W. 935.

Offense under L. '03 63 is not "continuing" charge—on more than one day is duplicitous, State v. Hoffman 56 W. 623.

Statute L. '03 63 against keepers of resorts—information insufficient, Pierce Code '05 §1877 is not affected—lesser offense of gambling included, State v. Gaasch 56 W. 381.

Information under L. '03 63 must charge place or resort, State v. Burns 54 W. 113.

Verdict "guilty of conducting a game of poker" good on a charge of "playing," State v. Smith 58 W. 235.

Former law Pierce Code '05 §1877 was not repealed by L. '03 63 relating to resorts, both repealed, §8739, State v. Gaasch 56 W. 381.

Offense under Pierce Code '05 §1877 included in L. '03 63—covers secret games—part in game immaterial, State v. Preston 49 W. 298.

State law making offense felony, does not supersede ordinance—ordinance against "any game or chance" includes game of "twenty six," Seattle v. Mac Donald 47 W. 258.

Statute is sufficiently definite for charge—the offense is in dealing and it is not necessary to specify with whom played, Foster v. Territory 1 W. 411; State v. Wilson 9 W. 16.

Charge in words of statute good, Schilling v. Territory 2 W. T. 283 Havland v. Territory 3 W. T. 131.

Although information alleges specific day of offense jury may be instructed to find offense if committed within one year, State v. Wilson 9 W. 16.

That chips and money were played for and the person in game on particular day is admissible as res gestae, id.

Specific instructions to find guilty if faro carried on for gain is cured if all instructions sever other elements of crime, id.

This act complete in itself and is valid, although there is existing law on same subject. In re Dietrick 32 W. 471.

**§8927. Betting. §218.** Every person who shall bet, wager or hazard any money or property, or any representative of either upon any game, scheme or device, opened, conducted, carried on or operated in violation of the last section shall be guilty of a misdemeanor.

Information under former law must charge what was played for, State v. Burns 54 W. 113. Playing at game an offense former law Pierce Code '05 §1877—verdict, State v. Smith 58 W. 235.

**§8928. Swindling. §219.** Every person who, by color, or aid of any trick or sleight of hand performance, or by any fraud or fraudulent scheme, cards, dice, or device, shall win for himself or for another any money or property, or representative of either, shall be punished by imprisonment in the state penitentiary for not more than ten years. Minn. C. '05 §4969.

Information sustained under §8944, State v. Ferrato 72 W. 112. not necessary, 29 Minn. 142, 12 N. W. 455.

Particular description of game of device —"cheats" at common law and under stat-



ute—false pretense distinguished 72 Minn. 522, 75 N. W. 715.

Statute intended to reach cheats of all kinds—"short change" trick, 82 Minn. 342, 85 N. W. 12.

Words of conspirator not in the presence of others admissible, 88 Minn. 262, 92 N. W. 976.

Evidence sufficient, 104 N. W. 295.

**§8929. Possession of Devices.** §220. Every person who shall have in his possession or shall permit to be placed or kept in any building or boat, or part thereof, owned, leased or occupied by him, any table, slot machine, or any other article, device or apparatus of a kind commonly used for gambling, or operated for the losing or winning of any money or property, or any representative of either, upon any chance or uncertain or contingent event, shall be guilty of a gross misdemeanor. Minn. C. '05 §4965.

**§8930. Pool Selling and Book-Making.** §221. Every person, whether acting in his own behalf, or as an agent, servant or employe of another person within or outside of this state, who shall sell any pool, make any book, or receive, record, register, transmit or forward any bet or wager, or any money or property or thing of value designed or intended to be bet, wagered or hazarded, upon the result of any contest or trial of skill, speed or endurance between men or beasts, whether such contest or trial take place within or outside of this state, or upon the result of any lot, chance, casualty, or uncertain or contingent event whatever, shall be punished by imprisonment in the state penitentiary for not more than five years.

**§8931. Allowing Building to Be Used.** §222. Every person being in possession or control of any tent, building, float or vessel, or part thereof, who shall knowingly permit the same, or any part thereof, to be used for gambling, swindling, pool selling, or bookmaking, or for betting, wagering or hazarding money or property, or any representative of either, upon any game, scheme or device, or upon the result of any lot, chance, or uncertain or contingent event whatever, shall be guilty of a gross misdemeanor.

**§8932. Bucket Shop Defined.** §223. A bucket shop is hereby defined to be a shed, tent, tenement, booth, building, float or vessel, or any part thereof, wherein may be made contracts respecting the purchase or sale upon margin or credit of any commodities, securities, or property, or option for the purchase thereof, wherein both parties, intend that such contract shall or may be terminated, closed and settled; either,

1. Upon the basis of the market prices quoted or made on any board of trade or exchange upon which such commodities, securities or property may be dealt in; or,

2. When the market prices for such commodities, securities or property shall reach a certain figure in any such board of trade or exchange; or,

3. On the basis of the difference in the market prices at which said commodities, securities or property are, or purport to be, bought and sold. N.Y. P.C. §355a.

**§8933. Maintaining Bucket Shop.** §224. Every person, whether in his own behalf, or as agent, servant or employe of another person, within or outside of this state, who shall open, conduct or carry on any bucket shop, or make or offer to make any contract described in the last section, or with intent to make such a contract, or assist therein, shall receive, exhibit, or display any statement of market prices of any commodities, securities, or property, shall be punished by imprisonment in the state penitentiary for not more than five years. N.Y.P.C. §335b.

**§8934. Written Statement to Be Furnished—Presumption.** §225. Every person, whether in his own behalf, or as the servant, agent or employe of another person, within or outside of this state, who shall buy or sell for another, or execute any order for the purchase or sale of any commodities, securities or property, upon margin or credit, whether for immediate or future delivery, shall, upon written demand therefor, furnish such principal or customer with a written statement containing the names of the persons from whom such property was bought, or to whom it has been sold, as the case may be, the time when, the place where, the amount of, and the price at which the same was either bought or sold; and if such person shall refuse or

neglect to furnish such statement within forty-eight hours after such written demand, such refusal shall be prima facie evidence as against him that such purchase or sale was made in violation of section 224 of this act.

**§8935. Seizure of Gambling Devices.** §226. It shall be the duty of all peace officers to search for and seize all tables, slot machines, or other article, machine, device or apparatus of the kind commonly used for gambling, or operated for the winning or losing of money or property, or any representative of either, upon any chance or uncertain or contingent event, and all property useful in the operation or maintenance of a bucket shop, and take the same before a magistrate. If in the judgment of such magistrate any of such articles may be useful as evidence in the trial of any case, he may order the same held for such trial or delivered to the prosecuting attorney; otherwise, he shall order the same to be forthwith destroyed. After the final hearing and disposition of any case in which any of said articles may be held or used as evidence, whether such case result in a conviction or acquittal, the magistrate or judge having jurisdiction of such case shall forthwith order all such articles destroyed. N.Y.P.C. §§345-7, 355c.

**§8936. Bunco-Steering.** §227. Every person who shall entice, or induce another, upon any pretense, to go to any place where any gambling game, scheme or device, or any trick, sleight of hand performance, fraud or fraudulent scheme, cards, dice or device, is being conducted or operated; or while in such place shall entice or induce another to bet, wager or hazard any money or property, or representative of either, upon any such game, scheme, device, trick, sleight of hand performance, fraud or fraudulent scheme, cards, dice, or device, or to execute any obligation for the payment of money, or delivery of property, or to lose, advance, or loan any money or property, or representative of either, shall be punished by imprisonment in the state penitentiary for not more than ten years.

**§8937. Evidence—Testimony of Player.** §228. No person shall be excused from giving testimony concerning any offense committed by another against any of the provisions of sections 217 or 221, inclusive, of this act, by reason of his having bet or played at the prohibited game or device.

## GRAND JURY.

**§8938. Grand Juror Acting After Challenge.** §121. Every grand juror who, with knowledge that a challenge interposed against him by a defendant has been allowed, shall be present at, or take part, or attempt to take part, in the consideration of the charge against the defendant who interposed such challenge, or the deliberations of the grand jury thereon, shall be guilty of a misdemeanor. N.Y.P.C. §144; Minn. C. '05 §4855.

Challenges, §9232.

**§8939. Grand Jury Disclosing Transaction.** §126. Every judge, grand juror, prosecuting attorney, clerk, stenographer or other officer who, except in the due discharge of his official duty, shall disclose the fact that a presentment has been made or indictment found or ordered against any person, before such person shall be in custody; and every grand juror, clerk or stenographer who, except when lawfully required by a court or officer, shall disclose any evidence adduced before the grand jury, or any proceeding, discussion or vote of the grand jury or any member thereof, shall be guilty of a misdemeanor. N.Y.P.C. §156; Minn. C. '05 §4862.

Grand jury and proceedings, §9232.

**§8940. Disclosure of Deposition.** §127. Every clerk of any court or other officer who shall wilfully permit any deposition, or the transcript of any testimony, returned by a grand jury and filed with such clerk or officer, to be inspected by any person except the court, the deputies or assistants of such clerk, and the prosecuting attorney and his deputies, until after the arrest of the defendant, shall be guilty of a misdemeanor. N.Y.P.C. §146.



**KIDNAPING.****Kidnaping.**

**§8941. Kidnaping Defined.** §158. Every person who shall wilfully—

1. Seize, confine, or inveigle another with intent to cause him without authority of law to be secretly confined or imprisoned, or in any way held to service, or with intent to extort or obtain money or reward for his return, release, or disposition, or to lead, take, entice away, or detain, a child under the age of sixteen years with intent to conceal him from his parent, guardian or other person having lawful care or control of him, or to steal any article upon his person; or

2. Abduct, entice, or by force or fraud unlawfully take or carry away another to or from a place without the state, and shall afterwards send, bring or keep such person, or cause him to be kept or secreted within this state;

Shall be guilty of kidnaping, and punished by imprisonment in the state penitentiary for not less than ten years. N.Y.P.C. §211; Minn. C. '05 §4900.

Consent of child is not a defense, *State v. Rhoades* 29 W. 61.

Abduction of female, §9111.

**§8942. Selling Services of Person.** §159. Every person, who within this state or elsewhere, shall sell or in any manner transfer for any term, the services or labor of any person who has been forcibly taken, inveigled, or kidnaped in or from this state, shall be punished by imprisonment in the state penitentiary for not more than ten years. N.Y.P.C. §214; Minn. C. '05 §4901.

**§8943. Venue—Effect of Consent.** §160. Any proceeding for kidnaping may be instituted either in the county where the offense was committed or in any county through or in which the person kidnaped or confined was taken or kept while under confinement or restraint. Upon a trial for violation of section 158 or 159 of this act, the consent thereto of the person kidnaped or confined shall not be a defense unless it appears satisfactorily to the jury that such person was above the age of sixteen years and that his consent was not extorted by threats, duress or fraud. N.Y.P.C. §§217,220; Minn. C. '05 §4903.

**LARCENY.**

**§8944. Larceny.** §349. Every person who, with intent to deprive or defraud the owner thereof—

(1) Shall take, lead or drive away the property of another; or

(2) Shall obtain from the owner or another the possession of or title to any property, real or personal, by color or aid of any order for the payment or delivery of property or money or any check or draft, knowing that the maker or drawer of such order, check or draft was not authorized or entitled to make or draw the same, or by color or aid of any fraudulent or false representation, personation or pretense or by any false token or writing or by any trick, device, bunco game or fortune-telling; or

(3) Having any property in his possession, custody or control, as bailee, factor, pledgee, servant, attorney, agent, employee, trustee, executor, administrator, guardian or officer of any person, estate, association or corporation, or as a public officer, or a person authorized by agreement or by competent authority to take or hold such possession, custody or control, or as a finder thereof, shall secrete, withhold or appropriate the same to his own use or to the use of any person other than the true owner or person entitled thereto; or

(4) Having received any property by reason of a mistake, shall with knowledge of such mistake secrete, withhold or appropriate the same to his own use or to the use of any person other than the true owner or person entitled thereto; and

(5) Every person who, knowing the same to have been so appropriated, shall bring into this state, or buy, sell, receive or aid in concealing or withholding any property wrongfully appropriated, whether within or outside of this state, in such manner as to constitute larceny under the provisions of this act—

Steals such property and shall be guilty of larceny. L. '15 492, R.&B. §2601.

Accused induced credulous woman to loan money to worthless third party, held guilty, *State v. Hooker* 99 W. 661.

Intent is the gist of larceny by embezzlement—evidence admitted—instructions, *State v. Ward* 96 W. 550.

Guilty knowledge not essential element of offense, *State v. Rettviel* 99 W. 434.

Giving chattel mortgage on property not owned is larceny, *State v. Wheeler* 101 W. 293.

Charge of \$29 and proof of fee of \$5 out of that amount, sustains petit larceny—sentence, not excessive, *State v. Hatupin* 93 W. 468.

Delivery of note makes agency—accused sold note and converted proceeds—settlement not bar, *State v. Campbell* 99 W. 502.

Money, etc., how charged §9291.

Conviction of principal not necessary—title to property—costs of keeping §9131-58.

Conviction for receiving stolen property without principal, §9131-58.

Definitions of property, §8738; estrays, §§9131-35, 2001; stock on range, §9131-35; fees by county officer, §1566; water for irrigation, §§3296, 3337; logs adrift, 3691.

Larceny of Torrens certificate, §5821.

False representation must be of existing or past fact, *State v. Lynn* 89 W. 463.

"So appropriated" applies to original larceny in all of preceding subdivisions—how original larceny alleged, *State v. Ketterman* 89 W. 264.

Defendant deposited checks on bank with no funds convicted—evidence of similar transactions admissible, *State v. Gunn* 85 W. 121.

Information under 1st and 5th subdivisions not duplicitous—accessory by overt act or assent, *State v. Klein* 94 W. 212.

Charge in language of statute sufficient, *State v. Martin* 94 W. 313.

Trustee in bankruptcy charging assignor with petit larceny of goods assigned has "probable cause" to defend action of false imprisonment, *Prentiss v. Bogart* 84 W. 481.

Charging color or aid and bailment not double—"or" in statute may be "and" in information, *State v. Pettit* 74 W. 510.

Surety on bond to secure payment of lost certificates deposit, receiving proceeds of certificates is within the statute, *State v. Jakubowski* 77 W. 78.

Land is not subject of larceny under this section, *State v. Klinkenberg* 76 W. 466.

Agent convicted for retaining money when he was to have no pay, *State v. Russell* 84 W. 607.

Larceny of indorsed certificate of deposit sustained, *State v. Garland*, 65 W. 666.

Any trick, artifice, or cunning calculated to win confidence and to deceive, by conversation, conduct or suggestion, is a "bunco game," *State v. Ferrato*, 72 W.

State officer who misappropriates money of the state is guilty of larceny, *State v. Snow*, 65 W. 353.

Defendant paid thief on several occasions, held one transaction—testimony of accomplices—ownership, *State v. Ray*, 62 W. 582.

Deprivation of owner, use of any person, 34 Minn 221, 25 N. W. 395; taking from possession without consent 47 Minn. 449, 50 N. W. 692; taking from servant,

servant consenting 17 Minn. 76, Gil. 54.

Trespass not necessary as at common law, 59 Minn. 151, 60 N. W. 1087; act charged must be described, 59 Minn. 147, 60 N. W. 1088; 54 Minn. 359, 56 N. W. 50.

False writing need not be such as would have legal effect if genuine, 77 Minn. 296, 79 N. W. 1007.

If false pretense rather than contract was inducement charge of crime will lie, 47 Minn. 483, 50 N. W. 532.

Effect pretense has regardless of the measure of prudence of person defrauded determines the crime, 77 Minn. 296, 79 N. W. 1007.

Embezzlement is form of larceny. Method of appropriation is immaterial—bank officer loaning to himself, 62 Minn. 7, 64 N. W. 51. There is a relation of trust and acts may run through considerable period of time, 65 Minn. 230, 68 N. W. 11. Intent is essential element and may be inferred from conduct, 79 Minn. 94, 81 N. W. 750; 88 Minn. 77, 92 N. W. 458; 28 Minn. 226, 9 N. W. 704.

Agent procured principal to make new notes to third party and converted them—name of payee and non-consent of owner need not be shown, 72 Minn. 296, 75 N. W. 235.

Ownership of property must be shown—assignor in insolvency is not owner in indictment against assignee, 79 Minn. 373 86 N. W. 674; bailment 88 Minn. 171, 92 N. W. 541; 77 Minn. 128, 79 N. W. 656; carrier 26 Minn. 191, 2 N. W. 492.

Evidence of branding admitted to show intent to steal, *State v. Wilson* 42 W. 56.

Charge of larceny sustained though proof of branding admitted, the latter being evidence of intention, *State v. Wilson* 42 W. 56.

Larceny of domestic animals under former law burden of explanation on defendant—allegation animals belonged to state—description of animals, *State v. McIntyre* 53 W. 178.

Agent of money sent for taxes—evidence—instructions, *State v. Wilson* 56 W. 289.

Obtaining money at charity falsely, under former law—vagrancy no defense, *State v. Sivan* 55 W. 97.

Showing different lot and giving deed to in state allowed to show former deed—relevancy of evidence, *State v. Dana* 59 W. 30.

Act L. '05 78 check without funds constitutional—proof of interest—ownership of money immaterial—proof of existence of funds, *State v. Pilling* 53 W. 464.

Larceny of horses sustained against attempt at proof of alibi, *State v. Gray* 61 W. 549.

Petit larceny included in larceny from the person, *State v. Clem* 49 W. 273.

Crime is committed by snatching money claiming it was won in game, *State v. Reis* 9 W. 329.

Larceny is committed though there is division of profits—agent may commit larceny in obtaining goods for principal, *State v. Mendenhall* 24 W. 12.

Instruction in larceny by dishonest gambling properly refused, *State ex rel. Skiebrick* 25 W. 555.

Instruction as to possession as evidence approved, *State v. Harras* 25 W. 416.

Non-consent of owner is element of



crime to be shown by testimony of owner or by circumstantial evidence, *State v. Wong Quong* 27 W. 93.

"Unlawfully" equivalent to "feloniously" where jury was properly instructed, *State v. Smith* 31 W. 245.

It is not necessary to itemize the value of each article stolen, *State v. Brew* 4 W. 95.

Instruction that possession of recently stolen property may be taken as conclusive evidence of guilt is error, *State v. Humason* 5 W. 499.

Charge that property is property of "another" is good—state has jurisdiction of larceny from U. S. court receiver, *State v. Coss* 12 W. 673.

Use of disjunction instead of conjunction is not fatal, *State v. Brookhouse* 10 W. 87.

Charge of larceny of money need not allege value, *State v. Bianchard* 11 W. 116.

Money need not be produced in court, *State v. Munson* 7 W. 239.

It must be shown that railroad tickets were stamped, dated and signed, *McCarty v. State* 1 W. 377.

If defendant has contract to take up cattle, mistaken identity of cattle is defense, *State v. Strodemeier* 40 W. 608.

This statute does not repeal general statute, *State v. Klein* 38 W. 475.

Not necessary to show value but is not error if instruction given, *State v. Washing* 36 W. 485.

Value of cattle need not be alleged, *State v. Young* 13 W. 584; or if alleged to be rejected as surplusage, *State v. Kyle* 14 W. 550.

Information sustained as stating sufficient facts, *State v. Backuloo* 18 W. 141.

Witness may testify on information and belief as to identity of criminal, *State v. Murphy* 15 W. 98.

Information describing steers as "head of cattle" is defective, *State v. Brookhouse* 10 W. 87.

Possession proven burden is on defendant to explain—evidence of right to take comment by court, *State v. Eubank* 33 W. 292.

Rights of defendant are not invalid, *State v. Kyle* 14 W. 550.

Defendant requested charge that possession alone insufficient to sustain verdict, it was not error for court to add "it is only a circumstance tending to show guilt," *State v. Duncan* 7 W. 336.

Obtaining money or goods by false pretenses, §8867 et seq.

Kind, character or denomination need not be averred—certainty required in allegation of ownership—that prosecution "did buy" and "paid" is sufficient allegation that defendant "obtained," *State v. Knowlton* 11 W. 512.

Effect of pretense on mind of person defrauded rather than on mind of "ordinary" person is fact to be found—other considerations are immaterial if pretense

§8945.

**Part Ownership No Defense.** §350. It shall be no defense to a prosecution for larceny that the accused was entitled to a commission out of the money or property appropriated, as compensation for collecting or receiving the same for or on behalf of the owner thereof, or that the money or property appropriated was partly the property of another and partly the property of the accused; but it shall not be larceny for any bailee, factor, pledgee, servant, attorney, agent, employee, or trustee, executor, adminis-

was dominant one, *id.*

Charge that thing given prosecutor was of no value and proof of some value is immaterial variance, *id.*

Any article of value included in this section, *State v. Smith* 9 W. 245; *State v. White* 12 W. 417; *State v. Rieff* 14 W. 664.

Showing that part of money embezzled will sustain conviction—civil action pending—particulars denied *State v. Lewis* 31 W. 75.

Charge against secretary of society for embezzlement held sufficient—facts shown held sufficient, *State v. Bogardus* 36 W. 297.

Omission of "for hire" in indictment is fatal, *Terry v. State* 1 W. 277.

Information insufficient because place of conversion not charged, *State v. Mayberry* 9 W. 193.

Plan of defendant may be shown as in the case of depositing checks taking part cash and retaining it, *State v. Pittam* 32 W. 137.

That party complaining embezzled the money defendant charged with is not defense, *State v. Hoshor* 26 W. 643.

Where larceny is charged to driver of wagon and he is responsible for collections retaining percentage embezzlement cannot be charged, *State v. Covert* 14 W. 652.

County auditor embezzled county warrant drawn for claimant against county, *State v. Raby* 31 W. 111.

Attorney retained whole fund asserting lien state relied on relation of principal and agent and convicted defendant—a greater or less amount than that charged may be proven, *State v. Lewis* 31 W. 515.

Charge of embezzlement of promissory note held sufficient, *State v. Whitworth*, 36 W. 47.

Agent with power of deducting commissions from sales may be charged for embezzlement of remainder, *State v. Maines* 26 W. 160.

Check given defendant in part for himself can be charged for embezzlement of part not for him, *State v. Hoshor* 26 W. 643.

Public officer using public funds may be informed against under this section or §8811, *State v. Isensee* 12 W. 254.

Charge that accused had come into possession as assignee and had converted it is sufficient, *State v. Whitman* 9 W. 402; *State v. Turner* 10 W. 94.

There are no grades of offense under this section as in larceny, *State v. Weydeman* 3 W. 399.

Continuing acts charge but one crime—duplicitly in bill of particulars does not vitiate information—conspiracy between officers of bank—insolvency of bank *State v. Dix* 33 W. 405.

Possession not averred as provided by statute held good, *State v. Kasper* 5 W. 174.

trator, guardian, officer or other person to retain his reasonable collection fee or charges. Minn. C.'05 §5079.

Commission no defense 25 Minn. 490.

**§8946. Larceny by Sale of Mortgaged Property.** §351. Every person who shall sell or mortgage any personal property which is at the time mortgaged or upon which any lien has been or may lawfully be filed, without informing the purchaser or mortgagee thereof, before the payment of the purchase price or money loaned, of the several amounts of all such mortgages and liens, shall be deemed to have made a false representation within the meaning of section 349, subdivision 2, of this act.

Destruction etc. of mortgaged property §8881; mortgages, §9746.

**§8947. Contractor Failing to Pay.** §352. Every person having entered into a contract to supply any labor or materials for the value or price of which any lien might lawfully be filed upon the property of another, who shall receive the full price or consideration thereof, or the amount of any account stated thereon, shall be deemed within the meaning of section 349, subdivision 3, of this act, to receive the same as the agent of the party with whom such contract was made, his successor or assign, for the purpose of paying all claims for labor and materials supplied.

**§8948. Grand Larceny.** §353. Every person who shall steal or unlawfully obtain, appropriate, bring into this state, buy, sell, receive, conceal or withhold in any manner specified in section 349 of this act:

1. Property of any value by taking the same from the person of another or from the body of a corpse; or

2. Property of any value by taking the same from any building that is on fire or by taking the same after it has been removed from a building in consequence of an alarm of fire; or

3. A record of a court or officer, or a writing, instrument or record kept, filed or deposited according to law with or in the keeping of any public officer or officers; or

4. From any range or pasture, any horse, mare, gelding, foal or filly, ass or mule, one or more head of neat cattle or any sheep; or

5. Property of the value of more than twenty-five dollars, in any manner whatever—

Shall be guilty of grand larceny and be punished by imprisonment in the state penitentiary for not more than fifteen years.

Every other larceny shall be petit larceny, and shall be a gross misdemeanor. N.Y.P.C. §§530-5; Minn. C.'05 §5081-2.

**Joint charge for grand larceny—evidence** 89 W. 27.

that person convicted took money, giving some to codefendant, who was acquitted, conviction sustained, State v. Haynes 83 W. 660.

Taking from range, etc., must be shown —taking under claim of right a defense, State v. Crossen 77 W. 438.

Continued petit larcenies constitute grand larceny, State v. Ray, 62 W. 582.

Venue shown though not directly proved —evidence held sufficient, State v. Libby

**§8949. Value, How Ascertained.** §354. The value of all instruments not having a market value, whether issued or delivered or not, by which any claim, privilege, right, obligation or authority or any right or title to property, real or personal, is, or purports to be, or upon the happening of some future event may be, evidenced, created, acknowledged, transferred, increased, diminished, encumbered, defeated, discharged or affected, shall be deemed to be the amount of money due thereon or secured to be paid thereby and unpaid, or which in any contingency might be collected thereon or thereby, or the value of the property transferred or affected or the title to which is shown thereby, or the sum which might be recovered for the want thereof, as the case may be. In every other case not otherwise regulated by statute, "value" shall be deemed to mean market value. N.Y.P.C. §§545-7; Minn. C.'05 §5090.

**§8950. Stealing Railway Tickets.** §355. If any person in the employ of a railway or steamboat company, shall fraudulently neglect to cancel or to return to the proper officer or agent of such company, any ticket, coupon or pass, with intent to permit the same to be used in fraud of any railway or steamboat company, or if any person shall steal or fraudulently stamp, print,



sign, sell or put into circulation any such ticket, coupon or pass, he shall be guilty of larceny. Minn. C. '05 §5186.

**§8951. Claim of Title as Defense.** §356. In any prosecution for larceny it shall be a sufficient defense that the property was appropriated openly and avowedly under a claim of title preferred in good faith, even though the claim be untenable. N. Y. P. C. §548; Minn. C. '05 §5091.

Refusal to instruct jury that taking under claim of right is a defense, is error. State v. Crossen 77 W. 438.

Defendant entitled to instruction on claim of agency though claim untenable. State v. Rolette 94 W. 94.

Minnesota statute adds: "But this shall

not excuse the retention of the property of another to offset or pay demands held against him."

Good faith of claim is for jury 43 Minn. 378, 45 N. W. 847; 61 Minn. 101, 63 N. W. 250.

**§8952. Restoration of Stolen Property.** §357. The officer arresting any person charged as principal or accessory in any robbery or larceny, shall use reasonable diligence to secure the property alleged to have been stolen, and after seizure shall be answerable therefor while it remains in his hands, and shall annex a schedule thereof, to his return of the warrant. Whenever the prosecuting attorney shall require such property for use as evidence upon the examination or trial, such officer, upon his demand, shall deliver it to him and take his receipt therefor, after which such person or attorney shall be answerable for the same. Minn. C. '05 §5095.

## LIBEL AND SLANDER.

### Libel and Slander.

**§8953. Libel Defined.** §172. Every malicious publication by writing, printing, picture, effigy, sign or otherwise than by mere speech, which shall tend:

1. To expose any living person to hatred, contempt, ridicule or obliquy, or to deprive him of the benefit of public confidence or social intercourse; or

2. To expose the memory of one deceased to hatred, contempt, ridicule or obliquy; or

3. To injure any person, corporation or association of persons in his or their business or occupation, shall be a libel. Every person who publishes a libel shall be guilty of a gross misdemeanor. N.Y.P.C. §242-3; Minn. C. '05 §4915.

Charging libel §9286.

Pleading libel and slander in civil action—truth as defense §8377.

Falsely charging crimes, §8267.

Charging candidate with waging a campaign of slander and lies and vicious methods is libelous per se, McKillip v. Grays Harbor Pub. Co. 100 W. 657.

Publication of discharge of employee "for intimidating company's employees" is libel per se, Dick v. Northern Pac. R. Co. 86 W. 211.

Charging restaurant is insanitary is libel per se—damages—malice, Wilson v. Sun Pub. Co. 85 W. 503.

Charging prosecuting attorney with non-feasance in office libelous per se, State v. Sefrit 82 W. 520.

Publication held libelous per se, State v. Takeuchi 80 W. 556.

Statements concerning water supply held libelous per se—no malice in civil libel—special damages, Olympia Water Works v. Mottman 88 W. 694.

Section supersedes former law, State v. Haffer 94 W. 136.

Section supersedes former law—libel of historic person, State v. Haffer 94 W. 136.

Compensatory damages only under L. '91 119 §3, Wilson v. Sun Pub. Co. 85 W. 503. Section repealed, L. '09 906.

Publishing of navigation company that it had driven competitors from the field and robbed the people is libelous, Puget Sound Nav. Co. v. Carter, 233 Fed. 832.

Posters stating theatres employed incompetent non-union help as dangerous are libelous per se—proof of loss, Cyclohome Amusement Co. v. Hayward-Larkin Co. 92 W. 367.

Foreign publication circulated in this state included in statute, State v. Piver, 74 W. 96.

Court must be judge of libelous character of publication, State v. Darwin, 63 W. 303.

The publication of plaintiff's photograph with story of father's crime is not a libel, Hillman v. Star Pub. Co., 64 W. 691.

Libel on two or more persons is one offense, 60 Minn. 168, 62 N. W. 270.

Charge of criminal act not necessary, 83 Minn. 441, 86 N. W. 431.

Office of innuendo, 83 Minn. 441, 86 N. W. 431.

One stockholder of corporation writing to another that a third was attempting to wreck the corporation, etc., is libelous per se—privilege—malice, Chambers v. Leiser 43 W. 285.

Article charging attorney with refusal to pay bills and charging excessive fees is libelous—burden of proof, Reynolds v. Holland 46 W. 537.

Truth at common law no defense—defense under statute, State v. Mays 57 W. 540.

Malice not necessary element of civil libel, Byrne v. Funk 38 W. 506.

Spoken words are not libelous, State v.

McArthur 5 W. 558.

not follow statute strictly, State v. Nichols

Information and charge to the jury need 15 W. 1.

**§8954. — Justified or Excused—Malice.** §173. Every publication having the tendency or effect mentioned in section 172 of this act, shall be deemed malicious unless justified or excused. Such publication is justified whenever the matter charged as libelous charges the commission of a crime, is a true and fair statement, and was published with good motives and for justifiable ends. It is excused when honestly made in belief of its truth and fairness and upon reasonable grounds for such belief, and consists of fair comments upon the conduct of any person in respect of public affairs, made after a fair and impartial investigation. N.Y.P.C. §244; Minn. C. '05 §4917.

Malice is gist of offense—not necessary Truth as a defense limited, State v. to allege falsity, State v. Sefrit 82 W. 520. Mays 57 W. 540.  
Truth, etc., in civil libel, §8378.

**§8955. — Publication Defined.** §174. Any method by which matter charged as libelous may be communicated to another shall be deemed a publication thereof.

**§8956. Liability of Editors and Others.** §175. Every editor or proprietor of a book, newspaper or serial, and every manager of a co-partnership or corporation by which any book, newspaper or serial is issued, is chargeable with the publication of any matter contained in any such book, newspaper or serial, but in every prosecution for libel the defendant may show in his defense that the matter complained of was published without his knowledge or fault and against his wishes by another who had no authority from him to make such publication, and was retracted by him as soon as known with an equal degree of publicity. N.Y.P.C. §246; Minn. C. '05 §4919.

**§8957. Report of Proceedings Privileged.** §176. No prosecution for libel shall be maintained against a reporter, editor, proprietor, or publisher of a newspaper for the publication therein of a fair and true report of any judicial, legislative or other public and official proceeding, or of any statement, speech, argument or debate in the course of the same, without proving actual malice in making the report. The editor or proprietor of a book, newspaper or serial shall be proceeded against in the county where such book, newspaper or serial is published. N.Y.P.C. §§247-8; Minn. C. '05 §4920.

Publication criticizing public officer may Charge that prosecuting attorney refused be malicious and libelous per se, State v. to prosecute criminal not within section, Sefrit 82 W. 520. State v. Sefrit 82 W. 520.

**§8958. Venue—Punishment Restricted.** §177. Every other person publishing a libel in this state may be proceeded against in any county where such libelous matter was published or circulated, but a person shall not be proceeded against for the publication of the same libel against the same person in more than one county. N.Y.P.C. §§249-51; Minn. C. '05 §4921.

**§8959. Privileged Communications.** §178. Every communication made to a person entitled to or concerned in such communication, by one also concerned in or entitled to make it, or who stood in such relation to the former as to offer a reasonable ground for supposing his motive to be innocent, shall be presumed not to be malicious, and shall be termed a privileged communication. N.Y.P.C. §253; Minn. C. '05 §4922.

Publishing matter libelous per se not privileged, State v. Sefrit 82 W. 520. Publication of charges libelous per se are not privileged, McKillip v. Grays Harbor Pub. Co. 100 W. 657.

**§8960. Furnishing Libelous Information.** §179. Every person who shall wilfully state, deliver or transmit by any means whatever, to any manager, editor, publisher, reporter or other employe of a publisher of any newspaper, magazine, publication, periodical or serial, any statement concerning any person or corporation, which, if published therein, would be a libel, shall be guilty of a misdemeanor. N.Y.P.C. §254a.

**§8961. Threatening to Publish Libel.** §180. Every person who shall threaten another with publication of a libel concerning the latter, or his spouse, parent, child, or other member of his family, and every person who offers to prevent the publication of a libel upon another person upon condition of the payment of, or with intent to extort, money or other valuable



consideration from any person, shall be guilty of a gross misdemeanor. N.Y. P.C. §254; Minn. C. '05 §4923.

**§8962. Slander of Woman. §181.** Every person who, in the presence or hearing of any person other than the female slandered, whether she be present or not, shall maliciously speak of or concerning any female of the age of twelve years or upwards, not a common prostitute, any false or defamatory words or language which shall injure or impair the reputation of any such female for virtue or chastity or which shall expose her to hatred, contempt or ridicule, shall be guilty of a misdemeanor. Every slander herein mentioned shall be deemed to be malicious unless justified, and shall be justified when the language charged as slanderous, false or defamatory is true and fair, and was spoken with good motives and for justifiable ends. Minn. C. '05 §4924.

Slander not justified presumed malicious, *State v. Paysee* 80 W. 603.

Falsely charging crime actionable §8267.

**§8963. Testimony Necessary. §182.** No conviction shall be had under the provisions of section 181 of this act, upon the testimony of the woman slandered unsupported by other evidence. Minn. C. '05 §4925.

Corroboration on necessary facts, only, necessary, *State v. Paysee* 80 W. 603.

**Supplementary—AN ACT relating to false statements, and making the same a gross misdemeanor.** Approved March 17, 1913. Laws '13, ch. 97.

**§8964. Slander of Bank. §1.** Any person who shall wilfully and maliciously instigate, make, circulate, or transmit to another or others any false statements concerning the moral or financial condition or affecting the solvency or financial standing of any bank, banking institution or trust company doing business in this state, or who shall wilfully counsel, aid, procure, or induce another to start, transmit or circulate any such statement or rumor, shall be guilty of a gross misdemeanor.

## LOTTERIES.

### Lotteries.

**§8965. Lotteries Defined—A Nuisance. §212.** A lottery is a scheme for the distribution of money or property by chance, among persons who have paid or agreed to pay a valuable consideration for the chance, whether it shall be called a lottery, raffle, gift enterprise, or by any other name, and is hereby declared unlawful and a public nuisance.

Every person who shall contrive, propose or draw a lottery, or shall assist in contriving, proposing or drawing a lottery, shall be punished by imprisonment in the state penitentiary for not more than five years, or by a fine of not more than one thousand dollars, or by both. Minn. C. '05 §4959.

**§8966. Selling Tickets, Advertising. §213.** Every person who shall sell, give, or in any way whatever furnish or transfer to or for another, a ticket, chance, share or interest, or any paper, certificate or instrument purporting to be or to represent a ticket, chance, share or interest in, or dependent upon the event of, a lottery, to be drawn within or without the state; or who by writing, printing, circular or letter, or in any other way shall advertise or publish the account of a lottery in or out of the state, stating how, when or where the same is to be or has been drawn, or what are the prizes therein, or any of them or the price of a ticket, or any share or interest therein, or where or how it may be obtained, shall be guilty of a gross misdemeanor. Minn. C. '05 §4960.

**§8967. Disposal of Property. §214.** Every person who shall offer for sale or distribution in any way any real or personal property, or any interest therein, to be determined by lot or chance, dependent upon the drawing of a lottery in or out of the state; or who shall sell, furnish or procure in any manner a chance or share, or any interest in property offered for sale or distribution in violation of this section, or a ticket or other evidence of any such chance, share or interest; or who shall open, set up, or keep for himself or another, an office or place for registering the number of tickets in a lottery in or out

of the state, or for making, receiving, or registering any bets or stakes for the drawing or result of such lottery; or who shall advertise or in any way publish any account of an opening, setting up, or keeping of such an office or place; or who shall knowingly let, or permit to be used, any building or portion thereof for any of the purposes specified in this subdivision;

Shall be guilty of a gross misdemeanor. Minn. C. '05 §4961.

**§8968. Insuring Lottery Tickets.** §215. Every person who shall insure, or receive any consideration for insuring, for or against the drawing of a ticket, share or interest in a lottery, or of a number of such ticket, share or interest; or who shall receive any valuable consideration, upon an agreement to pay money or deliver property in the event that a ticket, share or interest, or a number of such a ticket, share or interest in a lottery shall prove fortunate or unfortunate, or shall be drawn or not drawn in a proper way or in a proper order; or who shall promise or agree or offer to pay money or deliver property, or to do or forbear to do any act for the benefit of any person, with or without consideration, upon any accident or contingency dependent upon the drawing thereof, or of any number or ticket therein, or who, by writing, printing, circular or letter, or in any way, shall advertise or publish an offer, notice or proposition in violation of the provisions of this section;

Shall be guilty of a gross misdemeanor. Minn. C. '05 §4962.

**§8969. Lotteries Out of State.** §216. The provisions of this subdivision are applicable to lotteries drawn, or to be drawn out of the state, whether authorized or not by the laws of the state or country where they are to be drawn, in the same manner as to those in the state, and every provision of law relating to advertising lotteries or offers to insure lottery tickets, shall be applicable, whenever the advertisement was published, or the letter or circular sent or delivered, through or in the state, though the person causing or procuring the same to be published, sent or delivered was out of the state at the time of so doing. Minn. C. '05 §4963.

## MALICIOUS MISCHIEF.

### Malicious Mischief—Injury to Property.

**§8970. Malicious Mischief—Injury to Railway.** §398. Every person who, in such manner as might, if not discovered, endanger the safety of any engine, motor, car or train, or any person thereon, shall in any manner interfere or tamper with or obstruct any switch, frog, rail, roadbed, sleeper, viaduct, bridge trestle, culvert, embankment, structure or appliance pertaining to or connected with any railway, or any train, engine, motor, or car on such railway; and every person who shall discharge any firearm or throw any dangerous missile at any train, engine, motor or car on any railway, shall be punished by imprisonment in the state penitentiary for not more than twenty-five years. N. Y. P. C. §335: Minn. C. '05 §5124.

Malicious mischief, prior laws §9131-61. Malicious trespass unsurveyed lands Rewards by governor §9352. §9131-108.

**§8971. Attempt to Commit Train Robbery.** §399. Every person who, with intent to commit any robbery, burglary or larceny, shall go upon or board any train, motor, car or engine; mask, extinguish or alter any light or other signal; exhibit or compel any other person to exhibit any false light or signal; or stop any such train, car or engine or slacken the speed thereof or compel or attempt to compel any other person in charge or control thereof to stop such train, car or engine or slacken the speed thereof, shall be punished by imprisonment in the state penitentiary for not less than five years.

Attempts generally, §8699.

**§8972. Endangering by Explosives.** §400. Every person who shall maliciously place any explosive substance or material in, upon, under, against or near any building, car, vessel, railroad track or structure, in such manner or under such circumstances as to destroy or injure the same if exploded, shall be guilty of a felony, and if the circumstances and surroundings are such



that the safety of any person might be endangered by the explosion thereof, shall be punished by imprisonment in the state penitentiary for not more than twenty years; and in every other case by imprisonment in the state penitentiary for not more than five years. Minn. C.'05 §5125.

Manslaughter by, §9008; misdemeanor, §9016; transporting, §9018.

**§8973. Damage by Explosion.** §401. Every person who shall maliciously, by the explosion of gun powder or any other explosive substance or material, destroy or damage any building, car, vessel, railroad track or structure, shall be punished as follows:

1. If thereby the life or safety of a human being is endangered, by imprisonment in the state penitentiary for not more than twenty years.

2. In every other case by imprisonment in the state penitentiary for not more than five years. N.Y.P.C. §636.

**§8974. False Signals.** §402. Every person who, in such manner as might, if not discovered, endanger a vessel, railway engine, motor, train or car, shall show, mask, extinguish, alter or remove any light or signal, or exhibit any false light or signal, shall be punished by imprisonment in the state penitentiary for not more than ten years. Minn. C.'05 §5127.

**§8975. Injury to Light.** §403. Every person who shall wilfully break, injure, deface or destroy any light house station, post, platform, step, lamp or other structure pertaining to such light house station, or shall extinguish or tamper with any light erected by the United States upon or along the navigable waters of this state to aid in the navigation thereof, in case no punishment is provided therefor by the laws of the United States, shall be punished as follows:

1. Whenever such act may endanger the safety of any vessel navigating such waters, or jeopardize the safety of any person or property in or upon such vessel, by imprisonment in the state penitentiary for not more than ten years.

2. In all other cases by imprisonment in the county jail for not more than one year, or by a fine of not more than one thousand dollars, or by both. Minn. C.'05 §5128.

**§8976. Injuring Public Utilities.** §404. Every person who shall wilfully or maliciously remove, damage or destroy:

1. A highway or a private way laid out by authority of law, or a bridge upon such public or private road, or wilfully or maliciously cause to be placed thereon any substance or thing dangerous to any person or animal traveling thereon or which might injure or puncture the tire of any vehicle; or,

2. A pile or other material fixed in the ground and used for securing any bank or dam of any river or other water, or any dike, dock, quay, jetty or lock; or,

3. A buoy or beacon lawfully placed in any waters within this state; or

4. A tree, rock, post or other monument erected or marked for the purpose of designating a point on the boundary of the state, of a county, city, town or of a farm, tract or lot of land, or any mark or inscription thereon; or,

5. A mile board, mile stone or guide post erected upon a highway, or any inscription thereon; or

6. A telegraph, telephone or electric transmission line or any part thereof, or any appurtenance thereto, or apparatus connected with the operation thereof; or

7. A fence, gate, cattle-guard, bridge, water tank, mile post, car, engine, motor or other useful structure on the line of any railway; or

8. A pipe or main for conducting gas, water or oil, or any works erected for the purpose of supplying buildings, therewith, or any appurtenance or appendage thereto; or,

9. A sewer or drain, or a pipe or main connected therewith or forming part thereof; or,

10. A ditch or flume lawfully erected for carrying water or draining land; or,

11. Any engine, hose, hose-cart, truck, ladder, extinguisher or other apparatus used by any fire company or fire department, or any rope wire, bell, signal, instrument or apparatus for the communication of alarms of fire or police calls; or,

12. Any public building, or building used for educational, scientific, charitable or religious purpose, or any useful or ornamental thing therein; or,

13. Any work of literature or art or copy thereof, object of curiosity or scientific interest, statue, picture or engraving, displayed, kept or erected in any public building, street, park or other public place or in any collection, exhibition, museum, fair, gallery or library, or in any building devoted to educational, scientific, charitable or religious purposes; or,

14. A monument erected in any cemetery, street, park or other public place; or,

15. A sign or notice erected or posted by any officer under lawful authority, or by the owner or occupant of the premises where posted; or,

16. A legal notice or other legal paper posted in compliance with the requirement of any statute of this state, or under the direction or order of a court; and,

Every person—

17. Who shall moor any vessel, scow, barge, raft or boom to any bridge or to any buoy or beacon lawfully in any waters within this state; or,

18. Who shall intercept, read or in any manner interrupt or delay the sending of a message over any telegraph or telephone line; or

19. Who shall erect or maintain any unlawful structure in any stream or river;

Shall be guilty of a misdemeanor. N.Y.P.C. §639; Minn. C.'05 §5130.

Tampering with irrigation appliances §8984; former laws not repealed, §9131-108, §9131-56; electric appliances, §9131-29.

Use of fine wires to make connections  
Offenses: irrigation appliances, §3336; doing no physical damage not punishable  
artesian wells, §149. under subd. 6; nor 18 without evidence,

Injury to public library, §5500; trespass, State v. Nordskog 76 W. 472.

§8977. Interference With Gas, Electric, Steam or Water Appliance. §405.

Every person who, with intent to injure or defraud, shall—

1. Break or deface the seal of any gas, electric, steam or water meter; or,

2. Obstruct, alter, injure or prevent the action of any meter or other instrument used to measure or register the quantity of gas, electricity, steam or water supplied to a consumer thereof; or,

3. Make any connection by means of a wire, pipe, conduit or otherwise with any wire, main or pipe used for the delivery of gas, electricity, steam or water to a consumer thereof, in such manner as to take gas, electricity, steam or water from said wire, main or pipe without its passage through the meter or other instrument provided for registering the amount or quantity consumed; or use any gas, electricity, steam or water so obtained; or

4. Make any connection or re-connection with such wire, main or pipe, or turn on or off, or in any manner interfere with any valve, stop-cock or other appliances connected therewith; or,

5. Prevent by the erection of any device or construction, or by any other means, free access to any meter or other instrument for registering or measuring the amount of gas, electricity, steam or water consumed, or interfere with, obstruct or prevent, by any means, the reading or inspection or such meter or instrument, by the person, company or corporation owning the same; or,

6. Take or use any water from any irrigation flume, ditch or lateral, without the consent of the owner thereof, or open, close or interfere with any gate connected therewith;

Shall be guilty of a misdemeanor. N.Y.P.C. §651.

Crime to tamper with electric appliance Code 1905 §1627—aperture in dam—animus, State v. Tiffany 44 W. 602.  
§9131-29.

Irrigation purposes covered by Pierce

§8978. Inference With Dam, Reservoir, Etc., §406. Every person who shall wilfully or maliciously displace, remove, injure or destroy any pier, boom, or dam lawfully erected or maintained upon, in or across any water in this state, or any dam or reservoir lawfully maintained for impounding water; or hoist any gate in or about such dam or reservoir, shall be guilty of a gross misdemeanor. Minn. C.'05 §5131.

§8979. Injury to Property. §407. Every person who shall wilfully—

1. Cut down, destroy or injure any wood, timber, grain, grass or crop,



standing or growing, or which has been cut down and is lying upon the lands of another, or of the state; or

2. Cut down, girdle or otherwise injure a fruit, shade or ornamental tree standing on the land of another or of the state, or in any road or street; or

3. Dig, take or carry away without lawful authority or consent, from any lot or land in any city, or town, or from any lands included within the limits of a street or avenue in such city or town, any earth, soil or stone; or,

4. Enter without the consent of the owner or occupant, any orchard, garden or vineyard, with intent to take, injure or destroy anything there grown or growing; or,

5. Cut down, destroy or in any way injure any shrub, tree, vine or garden produce grown or growing within any such orchard, garden or vineyard, or any framework or erection therein; or,

6. Damage or deface any building or part thereof, or throw any stone or other missile at any building or part thereof; or

7. Destroy or damage, with intent to prevent or delay the use thereof, any engine, machine, tool or implement intended for use in trade or husbandry; or,

8. Untie, unfasten or liberate, without authority, the horse or team of another; or lead, ride or drive away, without authority, the horse, team, automobile or other vehicle of another from the place where left by the owner or person in charge thereof; or,

9. Kill, maim or disfigure any animal belonging to another, or expose any poisons or noxious substance with intent that it should be taken by such animal; or,

10. Take, carry away, interfere with or disturb any oysters or other shell fish of another in any river, bay, or other water of this state, or remove, pull up or destroy any stake or buoy used for designating any oyster bed; or,

11. Intrude or place any hovel, shanty or building upon or within the limits of any lot or piece of land within any city or town, without the consent of the owner, or within the boundaries of any street in such city or town; or,

12. Kill, wound or trap any animal or bird within the limits of any cemetery, park or pleasure ground, or remove therefrom or destroy the young of any such animal or the egg of any such bird; or,

13. Injure, destroy or tamper with any rope, line, cable or chain with which any vessel, scow, boom, beacon or buoy shall be anchored or moored, or the steering gear, bell gear, engine, machinery, lights or other equipment of any vessel; or,

14. Place upon or affix to any real property or any rock, tree, wall, fence or other structure thereupon, without the consent of the owner thereof, any word, character or device designed to advertise any article, business, profession, exhibition, matter or event; or,

15. Suffer any animal to go upon the enclosed right-of-way of any railway company, or leave open any gate or bars so that an animal might stray upon such right-of-way;

Shall be guilty of a misdemeanor. N.Y.P.C. §640; Minn. C.'05 §5133.

Trespass, §§8984. 9131-108.

Poisoning honey bees, §146.

Injury to public library, §5500.

**§8980. Tampering With Letters, Telegrams, Etc. §408.** Every person who shall wilfully or maliciously destroy, alter, erase, obliterate or conceal any letter, telegraph message, book or record of account, or any writing or instrument by which any claim, privilege, right, obligation or authority, or any right or title to property, real or personal, is, or purports to be, or upon the happening of some future event may be, evidenced, created, acknowledge, transferred, increased, diminished, encumbered, defeated, discharged or affected, shall be guilty of a gross misdemeanor.

**§8981. Falsifying Accounts. §409.** Every person who shall wilfully or maliciously make any false entry, or fail to make an entry of any material matter, in any book or record of account, shall be guilty of a gross misdemeanor.

**§8982. Divulging Telegram.** §410. Every person who shall wrongfully obtain or attempt to obtain, any knowledge of a telegraphic message, by connivance with the clerk, operator, messenger or other employe of a telegraph company, and every clerk, operator, messenger or other employe of such company who shall wilfully divulge to any but the person for whom it was intended, any telegraphic message or dispatch entrusted to him for transmission or delivery, or the nature or contents thereof, or shall wilfully refuse, neglect or delay duly to transmit or deliver the same, shall be guilty of a misdemeanor. N.Y.P.C. §§641; Minn. C.'05 §5134.

Telegraphs, §8146.

**§8983. Opening Sealed Letter.** §411. Every person who shall wilfully open or read, or cause to be opened or read, any sealed message, letter or telegram intended for another person, or publish the whole or any portion of such a message, letter or telegram, knowing it to have been opened or read without authority, shall be guilty of a misdemeanor. N.Y.P.C. §642; Minn. C.'05 §5135.

**§8984. Trespass on Railway Track.** §412. Every person who, without permission from the person or corporation owning or operating the same, shall enter, or take any animal or vehicle upon any railway, bridge or trestle, or ride, operate or propel a handcar, velocipede, track bicycle or tricycle on or along the track of any railway, shall be guilty of a misdemeanor. Minn. C.'05 §5148.

Former laws not repealed, §9131-108. 1905 §1612, §1613 as to taking of timber, This section supersedes Pierce's Code Tacoma Mill Co. v. Perry 32 W. 650.

**Supplementary—AN ACT prohibiting persons from going or being upon certain portions of rights of way of railroads and interurban electric roads, providing penalties for violation hereof and requiring certain signs to be erected at highway crossings.** Approved March 20, 1913. Laws '13, ch. 128.

**§8985. Trespass on Double Track or Third Rail Electric Track.** §1. It shall be unlawful for any person to go upon or be upon that portion of any railroad right of way upon which is constructed and operated more than one main line track or upon which is constructed and operated an electric interurban line of one or more tracks where the electricity is transmitted by a third rail.

**§8986. Crossings Excepted.** §2. The foregoing section shall not be construed to include that part of any right of way embraced in any highway crossing or any lawful private crossing; and shall not be construed to prohibit officers or employes of any such railroad or public officers from going or being upon any portion of the right of way in the performance of their duties.

**§8987. Warning Signs.** §3. The Public Service Commission of Washington shall require any company operating such a railroad as is described in section one of this act to erect and maintain upon such part of its line, at every point where a highway crosses such line, a sign or a warning, in form to be prescribed by such commission.

**§8987a. Penalty.** §4. Any person violating the provisions of section one of this act shall be guilty of a misdemeanor.

**§8988. Trespass on Land of Another.** §413. Every person who shall go upon the land of another with the intent to vex or annoy the owner, or occupant thereof, or to commit any unlawful act, or shall enter upon the enclosed land of another for the purpose of hunting or fishing without having first obtained the permission of the owner or occupant of said land, or shall enter upon any land of another bounded on one or more sides by water when notices not to trespass thereon have been posted as often as every 700 feet on or near the other boundaries thereof for either of said purposes, or shall wilfully go or remain upon any land after having been warned by the owner or occupant thereof not to trespass thereon, shall be guilty of a misdemeanor.

An entryman on land under the laws of the United States shall be deemed an owner within the meaning of this section.



Enclosed land shall for the purpose of this act mean any land fenced either with a lawful fence or with such a fence as is usually used in the neighborhood of such land. R&B §2665; L. '13, ch. 139.

Trespass, laws not repealed, §9131-108.

**§8989. Injury to Baggage.** §414. Every person employed by any person or corporation engaged wholly or in part in the business of carrying passengers or baggage for hire, and every express agent, stage driver, drayman, expressman or hackman who shall wilfully or carelessly break, injure or destroy any trunk, valise, box, package or other baggage, shall be guilty of a misdemeanor. Minn. C.'05 §5150.

**§8990. Injury to Other Property.** §415. Every person who shall wilfully or maliciously destroy or injure any real or personal property of another, for the destruction or injury of which no special punishment is otherwise specially prescribed, shall —

1. If the value of the property destroyed, or the diminution in value by the injury, shall be less than twenty dollars, be guilty of a misdemeanor.

2. If the value of the property destroyed, or the diminution in value by the injury, shall be twenty dollars or more, be guilty of a gross misdemeanor. Minn. C.'05 §5141.

### MALICIOUS PROSECUTION.

**§8991. Malicious Prosecution.** §117. Every person who shall, maliciously and without probable cause therefor, cause or attempt to cause another to be arrested or proceeded against for any crime of which he is innocent—

1. If such crime be a felony, shall be punished by imprisonment in the state penitentiary for not more than five years and,

2. If such crime be a gross misdemeanor or misdemeanor, shall be guilty of a misdemeanor.

Return of grand jury on malice §9243.

prisonment claiming statute had been repealed, Williams v. Brooks 95 W. 410.

After paying fine judgment cannot be collaterally attacked by action for false im-

Information charging both is double, State v. Smith 85 W. 352.

### MAYHEM.

#### Maiming.

**§8992. Maiming Defined—How Punished.** §155. Every person who, with intent to commit a felony, or to injure, disfigure or disable another, shall wilfully inflict upon him an injury which—

1. Seriously disfigures his person by any mutilation thereof; or

2. Destroys or displaces any member or organ of his body; or

3. Seriously diminishes his physical vigor by the injury of any member or organ;

Shall be guilty of maiming and be punished by imprisonment in the state penitentiary for not more than ten years, and the wilful infliction of the injury shall be prima facie evidence of the intent. N.Y.P.C. §206; Minn. C.'05 §4806.

Charge in language of statute good, State v. Catsampas, 62 W. 70.

**§8993. Instrument or Manner.** §156. To constitute maiming it is immaterial by what means or instrument or in what manner the injury was inflicted. N.Y.P.C. §209; Minn. C.'05 §4898.

**§8994. Recovery from Injury.** §157. Whenever upon a trial for maiming another person it shall appear that the injury inflicted will not result in any permanent disfiguration of appearance, diminution of vigor, or other permanent injury, no conviction for maiming shall be had, but the defendant may be convicted of assault in any degree. N.Y.P.C. §210; Minn. C.'05 §4899.

# MURDER, ETC.

## Homicide.

**58995. Homicide Defined and Classified.** §138. Homicide is the killing of a human being by the act, procurement or omission of another and is either (1) murder, (2) manslaughter, (3) excusable homicide or (4) justifiable homicide. N.Y.P.C. §§178, 180; Minn. C. '05 §4874.

Accused admitting design to effect death not entitled to instruction on manslaughter—premeditation absent evidence of second degree admissible—provocation—cooling time—prior provocation—insanity, State v. Gounagias 88 W. 304.

Former law in force until new code in effect. In re Newcomb 56 W. 395.

Setting spring gun in trunk—bias of jury—intent and malice—warning—case reversed, State v. Marfaudille 48 W. 117.

Crimes of rape, arson, etc., may be charged in the alternative—no particulars, State v. Fillpot 51 W. 223.

"Mortally wound" is good charge of intent to kill—time of death—insanity of accused, State v. Champoux 33 W. 339.

Conviction may be had for included offense, State v. Howard 33 W. 250.

Statute must be followed and if followed is sufficient, Blanton v. State 1 W. 265; Friedrich v. Territory 2 W. 358; State v. Day 4 W. 104.

Indictment not good for first degree held good for second degree, State v. Blanton 1 W. 265.

That defendant shot at two other persons with deceased after killing him is admissible as res gestae, Blanton v. State 1 W. 265.

Murder in second degree and manslaughter are included offenses, State v. Greer 11 W. 244.

Identity of body not questioned remainder of corpus delicti may be shown by circumstantial evidence, State v. Gates 28 W. 689.

Use of inapt but meaningless word in instruction on "premeditation" is harmless error, State v. Farris 26 W. 205.

Evidence if competent should not be stricken because of lack of probative force—circumstances of dying declarations admissible—error to refuse evidence by defendant of his feeling toward deceased—reputation of deceased for going armed admissible—danger to defendant, State v. Crawford 31 W. 260.

Defendant discharged on circumstantial evidence, State v. Pagano 7 W. 549.

If there is conspiracy act done by one is the act of all—presumption of murder in second degree in homicide, State v. Payne 10 W. 545.

Where evidence tends to show premeditation court should refuse to take from jury question of murder in the first degree, State v. Boyce 24 W. 515.

Corpus delicti in identification of body proven, sustained but not as to person committing crime, State v. Johnny Tommy 19 W. 270.

Information charging premeditation and malice as purpose need not allege particular acts as done in the manner and with the purpose, State v. Downing 24 W. 340.

Instruction as to degrees and premedita-

tion held insufficient, State v. Moody 18 W. 165.

Instructions on self-defense approved, State v. Carter 15 W. 121.

Indefinite description of instrument held good—instruction properly refused on particular theory of defense and ground covered by general instruction—intoxication—charge of interest of defendant in verdict is proper—facts found sufficient, State v. Casey 15 W. 549.

In murder by arson defendant cannot show whereabouts of third party when there has been no evidence connecting him with crime—remarks of court—reasonable doubt—supreme court will not disturb verdict after two trials, State v. Myers 12 W. 77.

Court may excuse jury and examine into competency of dying declarations—proof of good character of defendant, Klehn v. Territory 1 W. 584.

Charge of offense committed with knife held not bad for duplicity, State v. Regan 8 W. 506.

One not compelled to retreat on his own premises—threats whether communicated or not admissible—reputation of defendant for peace—gun and clothing of deceased are admissible and may be taken to jury room, State v. Cushing 14 W. 527.

Premeditation in going away several hundred feet and getting arms—killing by attempting to kill another is murder—threats of deceased, State v. McGonigle 14 W. 595.

Instruction on premeditation, State v. Rutlin 13 W. 203.

Instruction on premeditation disapproved—verdict not disturbed, State v. Holmes 12 W. 169.

In charge of first degree verdict of second degree is acquittal of first degree, State v. Murphy 13 W. 229.

One charged as accessory before the fact cannot be convicted of manslaughter, State v. Robinson 12 W. 349.

Diligence in procuring witness—proof of double homicide on trial for one—proof of presence of defendant on premises before crime when robbery the motive, State v. Craemer 12 W. 217.

Acquittal of murder of one person is not bar to charge for killing another at same time and place—statements of persons as res gestae, State v. Robinson 12 W. 491.

Homicide by setting spring gun—general intent of killing—reputation of defendant, State v. Barr 11 W. 482.

Conviction of murder in the first degree is warranted when defendant has shown malice, and on invitation lays down his weapon for an equal combat, but again takes it up and kills his adversary, State v. Vance 29 W. 435.

When self-defense interposed reputation of deceased for use of weapons may be



proven though defendant not aware of it, State v. Ellis 30 W. 369.

That deceased was quarrelsome is inadmissible, 1 W. T. 262.

Manslaughter is included offense, White v. Territory 3 W. T. 397.

Peculiar circumstances distinguishing crime need not be set out, Leschi v. Territory 1 W. T. 14.

It is not competent to show character of deceased unless assailed by the defense, State v. Eddon 8 W. 292.

Information approved, State v. Cronin 20 W. 512.

Information charging murder need not

§8996. **Proof of Death.** §139. No person shall be convicted of murder or manslaughter unless the death of the person alleged to have been killed and the fact of killing by the defendant, as alleged, are each established as independent facts beyond a reasonable doubt. N.Y.P.C. §181; Minn. C. '05 §4875.

§8997. **Murder in First Degree—Penalty.** §139. The killing of a human being, unless it is excusable or justifiable, is murder in the first degree when committed either—

1. With a premeditated design to effect the death of the person killed, or of another; or,

2. By an act imminently dangerous to others and evincing a depraved mind, regardless of human life, without a premeditated design to effect the death of any individual; or,

3. Without design to effect death, by a person engaged in the commission of, or in an attempt to commit, or in withdrawing from the scene of, a robbery, rape, burglary, larceny or arson in the **first degree**; or,

4. By maliciously interfering or tampering with or obstructing any switch, frog, rail, roadbed, sleeper, viaduct, bridge, trestle, culvert, embankment, structure or appliance pertaining to or connected with any railway, or any engine, motor or car of such railway.

Murder in the first degree shall be punishable by imprisonment in the state penitentiary for life, unless the jury shall find that the punishment shall be death; and in every trial for murder in the first degree, the jury shall, if it find the defendant guilty, also find a special verdict as to whether or not the death penalty shall be inflicted; and if such special verdict is in the affirmative, the penalty shall be death, otherwise, it shall be as herein provided. All executions in accordance herewith shall take place at the State Penitentiary under the direction of and pursuant to arrangements made by the superintendent thereof. L '19 ch 112; L '09 890; R&B, §2392; L '13 ch 167.

Instructions on premeditation, justification, credibility of witnesses, circumstantial evidence, State v. Duncan 101 W. 542.

Second degree murder sustained on the facts—deceased struck first blow but was retreating when shot, State v. Hawkins 89 W. 449.

The indictment sufficiently negatives that the killing was without justification, by alleging that it was "wilfully, unlawfully, feloniously and with a premeditated design," State v. Selfert, 65 W. 596.

"Premeditation" defined, 12 Minn. 538, Gil. 448; 13 Minn. 132, Gil. 125; presump-

§8998. — **Second Degree.** §141. The killing of a human being, unless it is excusable or justifiable, is murder in the second degree when—

1. Committed with a design to effect the death of the person killed or of another, but without premeditation; or

2. When perpetrated by a person engaged in the commission of, or in an attempt to commit, or in withdrawing from the scene of, a felony other than those enumerated in section 140 of this act;

Murder in the second degree shall be punished by imprisonment in the state penitentiary for not less than ten years. N.Y.P.C. §§184,187.

state place of death of deceased and if death not alleged at all proof of death is harmless error, State v. Baldwin 15 W. 15.

Allegation in charging part that murder was committed "on or about" certain date is good, State v. Williams 13 W. 335.

Information for murder in first degree with gun and knife held good, State v. Smith 9 W. 341.

Corpus delicti proven by proving charred corpse of a man with throat cut and bullet holes in body the body being recognized by friends, id.

Conviction on circumstantial evidence was not reversed, id.

tion from killing, 10 Minn. 223, Gil. 178; 12 id. 538, Gil. 448; 22 id. 514; 47 N. W. 720; 43 id. 69; 26 id. 397; accused shall rebut, 10 Minn. 223, Gil. 178.

Assertion that "dead men tell no tales" shows design, 14 Minn. 105, Gil. 75.

Conspiracy to rob murder ensuing, all guilty, 41 N. W. 463.

Killing another and different person than one intended is murder, 2 Minn. 123, Gil. 99; passion not provoked is not defense, 10 Minn. 223, Gil. 178; killing officer in discharge of duty, 25 N. W. 793.

Kill and murder sufficient allegation of death, State v. Jahns 61 W. 636.

"With design to effect death" defined, defendant manslaughter State v. Melvern 81 N. W. 17. 32 W. 7.

Charge of "iron instrument" is sustained by proof of iron cigar cutter, State v. Anderson 30 W. 14. Facts held to sustain conviction when suicide defense, id.

Homicide presumed to be murder in second degree unless state shows murder or 462. "Maliciously" is supplied by "of his premeditated malice," State v. Ackles 8 W.

**§8999. Killing in Duel. §142.** Every person who shall fight or participate in, as second or assistant, any duel within this state, in which any person is killed, or who, by previous appointment made within this state, shall fight or participate in, as second or assistant, any duel out of the state, in which any person is killed, shall be guilty of murder in the second degree; and, in the latter case, may be proceeded against in any county in this state. N.Y.P.C. §185; Minn. C. '05 §4878.

**§9000. Manslaughter. §143.** In any case other than those specified in sections 140, 141, and 142 of this act, homicide, not being excusable or justifiable, is manslaughter.

Manslaughter is punishable by imprisonment in the state penitentiary for not more than twenty years, or by imprisonment in the county jail for not more than one year, or by a fine of not more than one thousand dollars, or by both fine and imprisonment. N.Y.P.C. §§188-92.

Information against husband for beating, etc., wife, causing her death, held sufficient for murder or manslaughter—previous attacks admissible—dying declarations, State v. Lewis 80 W. 532. rest is manslaughter though person sought to be arrested is innocent, State v. Symes 20 W. 484.

Sale of unlabeled wood alcohol is manslaughter, State v. Takano 94 W. 119.

If a homicide is neither excusable or justifiable, it must at least be manslaughter, State v. Blaine, 64 W. 122.

Covers wide range of culpability, State v. Beebe, 66 W. 463.

Provocation, 13 Minn. 132, Gil. 125; 57 N. W. 325; mere trespass is not, 10 Minn. 223, Gil. 178; 57 N. W. 325; 59 id. 1101; nor killing of a friend, 13 Minn. 341, Gil. 315; mere words are not, 57 N. W. 325; accused must show, 26 N. W. 397; drunkenness may be shown, 13 Minn. 341, Gil. 315.

Killing of officer attempting to make ar-

**§9001. Killing Unborn Quick Child. §144.** The willful killing of an unborn quick child, by any injury committed upon the mother of such child, is manslaughter. N.Y.P.C. §§190-1; Minn. C. '05 §4882.

**§9002. — By Administering Drugs. §145.** Every person who shall provide, supply or administer to a woman, whether pregnant or not, or shall prescribe for or advise or procure a woman to take any medicine, drug or substance, or shall use or employ, or cause to be used or employed, any instrument or other means, with intent thereby to procure the miscarriage of a woman, unless the same is necessary to preserve her life, in case the death of the woman or of any quick child of which she is pregnant is thereby produced, shall be guilty of manslaughter. N.Y.P.C. §§190-1; Minn. C. '05 §4882.

**§9003. Woman Taking Drugs. §146.** Every woman quick with child who shall take or use, or submit to the use of, any drug, medicine or substance, or any instrument or other means, with intent to procure her own miscarriage, unless the same is necessary to preserve her own life or that of the child whereof she is pregnant, and thereby causes the death of such child, shall be guilty of manslaughter. Minn. C. '05 §4885.

Abortion generally, §8740.

**§9004. Owner of Vicious Animal. §147.** If the owner or custodian of any vicious or dangerous animal, knowing its propensities, shall wilfully or negligently allow it to go at large, and such animal while at large shall kill a human being not himself in fault, such owner or custodian shall be guilty of manslaughter. Minn. C. '05 §4887.

**§9005. Killing by Overloading Passenger Vessel. §148.** Every person navigating a vessel for gain who shall wilfully or negligently receive so many passengers or such a quantity of other lading on board, that by means



thereof such vessel shall sink, be overset or injured, and thereby a human being shall be drowned or otherwise killed, shall be guilty of manslaughter. Minn. C. '05 §4888.

**§9006. Reckless Operation of Steamboat or Engine.** §149. Every person having charge of a steamboat used for the conveyance of passengers, or of a boiler or engine thereof, who, from ignorance, recklessness or gross negligence, or for the purpose of excelling another boat in speed, shall create or allow to be created such an undue quantity of steam as to burst the boiler or other apparatus in which it is generated or contained, or to break any apparatus or machinery connected therewith, whereby the death of a human being is occasioned; and every engineer or other person having charge of a steam boiler, steam engine or other apparatus for generating or applying steam, who, wilfully or from ignorance or gross negligence, shall create or allow to be created such an undue quantity of steam as to burst the boiler, engine or apparatus, or to cause any other accident, whereby the death of a human being is occasioned, shall be guilty of manslaughter. Minn. C. '05 §4889. **Endangering by operation a misdemeanor §9094.**

**§9007. Liability of Intoxicated Physician.** §150. Every physician or surgeon, or person practicing as such, who, being in a state of intoxication, or under the influence of any narcotic drug, shall prescribe or administer any poison, drug or medicine, or do any other act as a physician, to another person, which, though done without design, shall cause the death of the latter, shall be guilty of manslaughter. N.Y.P.C. §200; Minn. '05 §4890.

**§9008. Keeping Explosive Unlawfully.** §151. Every person who shall make or keep gun powder, or any other explosive substance, in a city or village, in any quantity or manner prohibited by law or by ordinance of such municipality, if an explosion thereof shall occur whereby the death of a human being is occasioned, shall be guilty of manslaughter. N.Y.P.C. §201; Minn. '05 §4891. **Making, keeping, carrying, etc., explosives, §9016.**

**§9009. Homicide Excusable.** §152. Homicide is excusable when committed by accident or misfortune in doing any lawful act by lawful means, with ordinary caution and without any unlawful intent. N.Y.P.C. §203; Minn. C. '05 §4893.

**§9010. — Justifiable by Public Officer.** §153. Homicide is justifiable when committed by a public officer, or person acting under his command and in his aid, in the following cases:

1. In obedience to the judgment of a competent court.
2. When necessary to overcome actual resistance to the execution of the legal process, mandate or order of a court or officer, or in the discharge of a legal duty.
3. When necessary in retaking an escaped or rescued prisoner who has been committed, arrested for or convicted of a felony; or in arresting a person who has committed a felony and is fleeing from justice; or in attempting, by lawful ways or means, to apprehend a person for a felony actually committed; or in lawfully suppressing a riot or preserving the peace. N.Y.P.C. §204; Minn. C. '05 §4894.

**§9011. — By Other Person.** §154. Homicide is also justifiable when committed either—

1. In the lawful defense of the slayer, or his or her husband, wife, parent, child, brother or sister, or of any other person in his presence or company, when there is reasonable ground to apprehend a design on the part of the person slain to commit a felony or to do some great personal injury to the slayer or to any such person, and there is imminent danger of such design being accomplished; or

2. In the actual resistance of an attempt to commit a felony upon the slayer, in his presence, or upon or in a dwelling, or other place of abode, in which he is. N.Y.P.C. §205; Minn. C. '05 §4895.

Homicide in lawful defense of another justifiable—duty to retreat, State v. Meyer 96 W. 257. **is no "apparent" means to avoid the same, 59 N. W. 1101; defense of child by parent, 25 Minn. 161; person having right to be at**

**"Reasonable ground to believe" is more favorable instruction than statute, State v. Bowinkelman, 66 W. 396. place not bound to retreat, 104 N. W. 971; there must be reasonable grounds for belief of imminent danger, 85 N. W. 946, 98**

**Self defense—killing justifiable if there id. 334; provoking assault and using weap-**

on is not defense, 43 N. W. 62; resisting generally questions for jury, 34 N. W. 638; meanful arrest not defense, 25 N. W. 793; 723; court may instruct, 100 N. W. 638.

## NUISANCE.

### CHAPTER 7.—Crimes Against Public Health and Safety.

**§9012. Public Nuisance.** §248. A public nuisance is a crime against the order and economy of the state. Every place

1. Wherein any gambling, swindling game or device, book making, pool selling, or bucket shop or any agency therefor shall be conducted, or any article, apparatus or device useful therefor shall be kept; or,

2. Wherein any fighting between men or animals or birds shall be conducted; or,

3. Wherein any intoxicating liquors are kept for unlawful use, sale or distribution; or,

4. Where vagrants resort; and

Every act unlawfully done and every omission to perform a duty, which act or omission

1. Shall annoy, injure or endanger the safety, health, comfort, or repose of any considerable number of persons; or,

2. Shall offend public decency; or,

3. Shall unlawfully interfere with, defoul, obstruct, or tend to obstruct, or render dangerous for passage, a lake, navigable river, bay, stream, canal or basin, or a public park, square, street, alley or highway; or,

4. Shall in any way render a considerable number of persons insecure in life or the use of property;

Shall be a public nuisance. N.Y.P.C. §385; Minn. C. '05 §4987.

Intoxicating liquors, place, etc., sold a of city water supply, §1254.  
nuisance §3196-7.

Nuisance, civil procedure §8231.

Lotteries a nuisance §8965.

Former laws not repealed, §9131-68.

Adulterated drugs, sale of, §4464; food, etc., §2535.

Combustible material, §3151; pollution

Town may maintain action for nuisance—ordinance invalid, Kirkland v. Ferry 45 W. 663.

Place where pools on horse races sold are within section, State v. Shanklin 51 W. 35.

**Unequal Damage.** §249. An act which affects a considerable number of persons in any of the ways specified in section 248 of this act is not less a public nuisance because the extent of the damage is unequal. N.Y. P.C. §386.

**§9014. Maintaining Nuisance.** §250. Every person who shall commit or maintain a public nuisance, for which no special punishment is prescribed; or who shall wilfully omit or refuse to perform any legal duty relating to the removal of such nuisance; and every person who shall let, or permit to be used, any building or boat, or portion thereof, knowing that it is intended to be, or is being used, for committing or maintaining any such nuisance, shall be guilty of a misdemeanor. N.Y.P.C. §§387-8; Minn. C. '05 §4988.

**§9015. Abatement of Nuisance.** §251. Any court or magistrate before whom there may be pending any proceeding for a violation of section 250 of this act, shall, in addition to any fine or other punishment which it may impose for such violation, order such nuisance abated, and all property unlawfully used in the maintenance thereof destroyed by the sheriff at the cost of the defendant.

**§9016. Keeping Explosives Unlawfully.** §252. Every person who shall make or keep any explosive or combustible substance in any city or village, or carry it through the streets thereof in a quantity, or manner prohibited by law, or by ordinance of such municipality; and every person who, by careless, negligent or unauthorized use or management of any such explosive or combustible substance, shall injure or cause injury to the person or property of another, shall be guilty of a misdemeanor. Minn. C. '05 §4989.

Manslaughter by, §9008.



**§9017. Possession of Uninspected Oils and Effacing Brands.** §253. Every person who shall sell, or offer for sale, or have in his possession with intent to sell, or who shall knowingly use for illuminating purposes, any oil, or other petroleum product, which shall not have been tested and approved by the state oil inspector, or who shall sell or dispose of any empty oil barrel, cask or package without thoroughly removing and effacing all inspection brands thereon, shall be guilty of a misdemeanor.

**§9018. Transporting Explosives.** §254. Every person who shall put up for sale, or who shall deliver to any warehouseman, dock, depot, or common carrier any package, cask or can containing benzine, gasoline, naphtha, nitroglycerine, dynamite, powder or other explosive or combustible substance, without having printed thereon in a conspicuous place in large letters the word "Explosive," shall be guilty of a misdemeanor.

## OBSCENE LITERATURE.

**§9019. Obscene Literature.** §207. Every person who—

1. Shall sell, lend, or give away, or have in his possession with intent to sell, lend, give away or show any obscene or indecent book, magazine, pamphlet, newspaper, story paper, writing, picture, drawing, photograph, or any article or instrument of indecent or immoral character; or who shall design, copy, draw, photograph, print, utter, publish or otherwise prepare such a book, picture, drawing, paper or other article; or write or print any circular, advertisement or notice of any kind, or give oral information stating when, where, how or of whom such an indecent or obscene article or thing can be purchased or obtained; or,

2. Shall sell, lend, give away or have in his possession with intent to sell, lend, give away or show any book, pamphlet, magazine, newspaper or other printed paper devoted to the publication, or largely made up of criminal news, police reports, accounts of criminal deeds, or pictures and stories of deeds of bloodshed, lust or crime; or,

3. Shall exhibit within the view of any minor any of the books, papers or other things hereinbefore enumerated; or,

4. Shall hire, use or employ, or having, custody or control of his person shall permit, any minor to sell, give away, or in any manner distribute any article hereinbefore mentioned; or,

5. Shall cause to be performed or exhibited, or engage in the performance or exhibition of any obscene, indecent, or immoral show, act or performance; Shall be guilty of a gross misdemeanor. Minn. C. '05 §4954.

Pleading obscenity of literature, §9291.

Failure to charge knowledge of obscenity is not fatal nor is charge of all the acts prescribed, State v. Holedger 15 W. 443.

commerce not competent, State v. Ulsemer 24 W. 657.

Instruction that sole questions were "knowledge of indecency" and "indecent" upheld, State v. Ulsemer 24 W. 657.

Testimony of similar use of pictures in

**§9020. Indecent Articles, Etc.** §208. Every person who shall expose for sale, loan or distribution, any instrument or article, or any drug or medicine, for the prevention of conception, or for causing unlawful abortion; or shall write, print, distribute or exhibit any card, circular, pamphlet, advertisement or notice of any kind, stating when, where, how, or of whom such article or medicine can be obtained, shall be guilty of a misdemeanor. Minn. C. '05 §4955.

**§9021. Prohibited Publications.** §209. Every person who shall publish, and every proprietor, manager or editor who shall permit to be published, in any book, newspaper, magazine or other printed publication circulated wholly or in part in this state—

1. Any detailed account of the commission or attempted commission of the crime of rape, carnal knowledge, seduction, adultery, sodomy or any other sexual crime, or of the trial of any person charged therewith; or,

2. Any detailed account of the execution of any person convicted of crime; or,

3. Any detailed statement of any evidence of indecent, obscene or immoral acts offered in any trial or proceeding; or,

4. Any interview with, advertisement for, communication from or account of the actions of, any public prostitute, except upon a matter concerning public welfare;

Shall be guilty of a misdemeanor.

**§9022. Advertising Cures.** §210. Every person who shall publish, and every proprietor, manager or editor who shall permit to be published in any publication whatever, and every person who shall cause to be displayed or ~~published~~ in any public manner, any card or notice advertising any treatment ~~of~~ disease or weakness of the sexual organs caused by ~~venereal~~ ~~disease~~ shall be guilty of a misdemeanor.

Advertising cure venereal disease ~~§9021-123~~.

**§9023. Advertising for Divorce Business.** §211. Every person who shall cause to be published in any newspaper, magazine or other publication, or who shall cause or allow to be posted or distributed, in any place frequented by the public, any card or notice offering to procure or obtain, or to directly or indirectly aid in procuring or obtaining any divorce or the dissolution or nullification of any marriage, or offering to appear or act as attorney or counsel in any suit for divorce, alimony, or the dissolution or nullification of any marriage, either in this state or elsewhere, shall be guilty of a misdemeanor. Any advertisement stating or intimating that any person is a specialist in "the laws of husband and wife" or "domestic relations," or is engaged in the business of procuring divorces, shall be considered a violation of this act. L. '17 343, R.&B. §2463.

## PAWNBROKERS, ETC.

### Pawn Brokers and Second-Hand Dealers.

**§9024. Pawn Brokers, etc.—Record.** §229. It shall be the duty of every pawn broker and second-hand dealer doing business in any city of the first class in this state to maintain in his place of business a book or other permanent record in which shall be legibly written in the English language, at the time of each loan, purchase or sale, a record thereof containing—

1. The date of the transaction;
2. The name of the person or employe conducting the same;
3. The name, age, street and house number, and a general description of the dress, complexion, color of hair, and facial appearance of the person with whom the transaction is had;
4. The name and street and house number of the owner of the property bought or received in pledge;
5. The street and house number of the place from which the property bought or received in pledge was last removed;
6. A description of the property bought or received in pledge, which in the case of watches shall contain the name of the maker and the number of both the works and the case, and in the case of jewelry shall contain a description of all letters and marks inscribed thereon; Provided, That when the article bought or received is furniture, or the contents of any house or room actually inspected on the premises, a general record of the transaction shall be sufficient;
7. The price paid or the amount loaned;
8. The names and street and house numbers of all persons witnessing the transaction; and
9. The number of any pawn ticket issued therefor.

Noncompliance with law does void contract, Lane v. Henry 80 W. 172.

**§9025. Inspection of Records and Goods.** §230. Such record, and all goods received, shall at all times during the ordinary hours of business be open to the inspection of the prosecuting attorney or of any peace officer.



**§9017. Possession of Uninspected Oils and Effacing Brands.** §253. Every person who shall sell, or offer for sale, or have in his possession with intent to sell, or who shall knowingly use for illuminating purposes, any oil, or other petroleum product, which shall not have been tested and approved by the state oil inspector, or who shall sell or dispose of any empty oil barrel, cask or package without thoroughly removing and effacing all inspection brands thereon, shall be guilty of a misdemeanor.

**§9018. Transporting Explosives.** §254. Every person who shall put up for sale, or who shall deliver to any warehouseman, dock, depot or ~~any~~ carrier any package, cask or can containing glycerine, dynamite, powder or other explosive or combustible substance, without having printed thereon in a conspicuous place in large letters the word "Explosive," shall be guilty of a misdemeanor.

## OBSCENE LITERATURE.

**§9019. Obscene Literature.** §207. Every person who—

1. Shall sell, lend, or give away, or have in his possession with intent to sell, lend, give away or show any obscene or indecent book, magazine, pamphlet, newspaper, story paper, writing, picture, drawing, photograph, or any article or instrument of indecent or immoral character; or who shall design, copy, draw, photograph, print, utter, publish or otherwise prepare such a book, picture, drawing, paper or other article; or write or print any circular, advertisement or notice of any kind, or give oral information stating when, where, how or of whom such an indecent or obscene article or thing can be purchased or obtained; or,

2. Shall sell, lend, give away or have in his possession with intent to sell, lend, give away or show any book, pamphlet, magazine, newspaper or other printed paper devoted to the publication, or largely made up of criminal news, police reports, accounts of criminal deeds, or pictures and stories of deeds of bloodshed, lust or crime; or,

3. Shall exhibit within the view of any minor any of the books, papers or other things hereinbefore enumerated; or,

4. Shall hire, use or employ, or having custody or control of his person shall permit, any minor to sell, give away, or in any manner distribute any article hereinbefore mentioned; or,

5. Shall cause to be performed or exhibited, or engage in the performance or exhibition of any obscene, indecent, or immoral show, act or performance; Shall be guilty of a gross misdemeanor. Minn. C. '05 §4954.

Pleading obscenity of literature, §9291.

Failure to charge knowledge of obscenity is not fatal nor is charge of all the acts prescribed, State v. Holedger 15 W. 443.

commerce not competent, State v. Ulsemer 24 W. 657.

Instruction that sole questions were "knowledge of indecency" and "indecency" upheld, State v. Ulsemer 24 W. 657.

Testimony of similar use of pictures in

**§9020. Indecent Articles, Etc.** §208. Every person who shall expose for sale, loan or distribution, any instrument or article, or any drug or medicine, for the prevention of conception, or for causing unlawful abortion; or shall write, print, distribute or exhibit any card, circular, pamphlet, advertisement or notice of any kind, stating when, where, how, or of whom such article or medicine can be obtained, shall be guilty of a misdemeanor. Minn. C. '05 §4955.

**§9021. Prohibited Publications.** §209. Every person who shall publish, and every proprietor, manager or editor who shall permit to be published, in any book, newspaper, magazine or other printed publication circulated wholly or in part in this state—

1. Any detailed account of the commission or attempted commission of the crime of rape, carnal knowledge, seduction, adultery, sodomy or any other sexual crime, or of the trial of any person charged therewith; or,

2. Any detailed account of the execution of any person convicted of crime; or,

3. Any detailed statement of any evidence of indecent, obscene or immoral acts offered in any trial or proceeding; or,

4. Any interview with, advertisement for, communication from or account of the actions of, any public prostitute, except upon a matter concerning public welfare;

Shall be guilty of a misdemeanor.

**§9022. Advertising Cures.** §210. Every person who shall publish, and every proprietor, manager or editor who shall permit to be published in any publication whatever, and every person who shall cause to be displayed or distributed in any public manner, any card or notice advertising any treatment or cure for any venereal disease or any disease or weakness of the sexual organs caused by sexual vice or abuse, shall be guilty of a misdemeanor.

Advertising cure venereal disease §9031-123.

**§9023. Advertising for Divorce Business.** §211. Every person who shall cause to be published in any newspaper, magazine or other publication, or who shall cause or allow to be posted or distributed, in any place frequented by the public, any card or notice offering to procure or obtain, or to directly or indirectly aid in procuring or obtaining any divorce or the dissolution or nullification of any marriage, or offering to appear or act as attorney or counsel in any suit for divorce, alimony, or the dissolution or nullification of any marriage, either in this state or elsewhere, shall be guilty of a misdemeanor. Any advertisement stating or intimating that any person is a specialist in "the laws of husband and wife" or "domestic relations," or is engaged in the business of procuring divorces, shall be considered a violation of this act. L. '17 343, R.&B. §2463.

## PAWNBROKERS, ETC.

### Pawn Brokers and Second-Hand Dealers.

**§9024. Pawn Brokers, etc.—Record.** §229. It shall be the duty of every pawn broker and second-hand dealer doing business in any city of the first class in this state to maintain in his place of business a book or other permanent record in which shall be legibly written in the English language, at the time of each loan, purchase or sale, a record thereof containing—

1. The date of the transaction;
2. The name of the person or employe conducting the same;
3. The name, age, street and house number, and a general description of the dress, complexion, color of hair, and facial appearance of the person with whom the transaction is had;
4. The name and street and house number of the owner of the property bought or received in pledge;
5. The street and house number of the place from which the property bought or received in pledge was last removed;
6. A description of the property bought or received in pledge, which in the case of watches shall contain the name of the maker and the number of both the works and the case, and in the case of jewelry shall contain a description of all letters and marks inscribed thereon; Provided, That when the article bought or received is furniture, or the contents of any house or room actually inspected on the premises, a general record of the transaction shall be sufficient;
7. The price paid or the amount loaned;
8. The names and street and house numbers of all persons witnessing the transaction; and
9. The number of any pawn ticket issued therefor.

Noncompliance with law does void contract, Lane v. Henry 80 W. 172.

**§9025. Inspection of Records and Goods.** §230. Such record, and all goods received, shall at all times during the ordinary hours of business be open to the inspection of the prosecuting attorney or of any peace officer.



**§9026. Report to Chief of Police.** §231. Every pawn broker and second-hand dealer doing business in any city of the first and second class shall, before noon of each day, furnish to the chief of police of such city, on such forms as such chief of police may provide therefor, a full, true and correct transcript of the record of all transactions had on the preceding day, and, having good cause to believe that any property in his possession has been previously lost or stolen, he shall forthwith report such fact to the chief of police, together with the name of the owner, if known, and the date when, and the name of the person from whom the same was received by him.

**§9027. Retention of Property.** §232. No property bought or received in pledge by any pawn broker or second-hand dealer shall be removed from his place of business, except when redeemed by the owner thereof, within four days after the receipt thereof shall have been reported to the chief of police as herein provided.

**§9028. Penalty.** §233. Every pawn broker or second-hand dealer, and every clerk, agent or employe of such pawn broker or second-hand dealer, who shall—

1. Fail to make an entry of any material matter in his book or record kept as provided for in section 231 of this act; or,

2. Make any false entry therein; or,

3. Falsify, obliterate, destroy or remove from his place of business such book or record; or,

4. Refuse to allow the prosecuting attorney or any peace officer to inspect the same, or any goods in his possession, during the ordinary hours of business; or,

5. Report any material matter falsely to the chief of police; or,

6. Having forms provided therefor, shall fail before noon of each day to furnish the chief of police with a full, true and correct transcript of the record of all transactions had on the previous day, it being the intent of this section that Saturday's business may be reported on Monday; or,

7. Fail to report forthwith to the chief of police, the possession of any property which he may have good cause to believe has been lost or stolen, together with the name of the owner, if known, and the date when, and the name of the person from whom the same was received by him; or,

8. Remove, or allow to be removed from his place of business, except upon redemption by the owner thereof, any property received, within four days after the receipt thereof shall have been reported to the chief of police; or,

9. Receive any property from any person under the age of twenty-one years, any common drunkard, any habitual user of narcotic drugs, any habitual criminal, any person in an intoxicated condition, any known thief or receiver of stolen property, or any known associate of such thief or receiver of stolen property, whether such person be acting in his own behalf or as the agent of another;

Shall be guilty of a misdemeanor.

**§9029. Rates of Interest and Sale of Property.** §234. All pawn brokers are authorized to charge and receive interest at the rate of three per cent. a month for money loaned on the security of personal property actually received in pledge, and every person who shall ask or receive a higher rate of interest or discount on any such loan, or on any actual or pretended sale, or redemption of personal property, or who shall sell any property held for redemption within ninety days after the period for redemption shall have expired, shall be guilty of a misdemeanor.

**§9030. "Pawn Broker" Defined.** §235. Every person engaged, in whole or in part, in the business of loaning money on the security of pledges, deposits or conditional sales of personal property, shall be deemed to be a pawn broker.

**§9031. "Second-Hand Dealer" Defined.** §236. Every person engaged, in whole or in part in the business of buying or selling second-hand personal property, metal junk, or melted metals, shall be deemed to be a second-hand dealer.

## PERJURY, ETC.

## Perjury and Other Crimes.

**§9032. Perjury—First Degree.** §99. Every person who, in any action, proceeding, hearing, inquiry or investigation, in which an oath may lawfully be administered, shall swear that he will testify, declare, depose or certify truly, or that any testimony, declaration, deposition, certificate, affidavit or other writing by him subscribed is true, and who in such action, proceeding, hearing, inquiry or investigation shall state or subscribe as true any material matter which he knows to be false, shall be guilty of perjury in the first degree and shall be punished by imprisonment in the state penitentiary for not more than fifteen years. N.Y.P.C. §96; Minn. C. '05 §4831.

Information, etc., for §9288.

Perjury in second degree not included—knowing untruth, State v. Wilson 83 W. 419.

Oath must be required or authorized, 41 Minn. 59, 42 N. W. 599; 84 Minn. 281, 87 N. W. 764; must be administered—signing affidavit insufficient, 57 Minn. 425, 59 N. W. 490. There must be intent, 29 Minn. 156, 12 N. W. 448.

Indictment, requisites of 59 N. W. 490, 77 id. 223, 51 id. 474, 81 id. 3.

Subornation of perjury, 88 N. W. 22.

Information for perjury sustained, State v. McClain 43 W. 124.

Common law and statutory crimes the same under former law—information—par-

ticulars in one count—interest of witnesses, State v. Eald 55 W. 302.

Indictment not describing proceedings wherein perjury committed is defective, State v. See 4 W. 344.

Allegation of authority to administer oath and materiality of evidence—hotel register and host's testimony to prove presence of defendant—instructions, State v. Douette 31 W. 6.

Charge must be brief and material, State v. Roberts 22 W. 1.

Charge must be specific and that testimony was material, State v. Guse 21 W. 269.

Affidavit must be material and used, State v. Smith 3 W. 14.

**§9033. Knowledge of Materiality Not Necessary.** §100. It shall be no defense to a prosecution for perjury in the first degree that the defendant did not know the materiality of his false statement or that it did not in fact affect the proceeding in or for which it was made. It shall be sufficient that it was material and might have affected such proceeding. N.Y.P.C. §99; Minn. C. '05 §4833.

This section relates only to perjury in the first degree, State v. Wilson 83 W. 419.

**§9034. Second Degree.** §101. Every person who, whether orally or in writing, and whether as a volunteer, or in a proceeding or investigation authorized by law, shall knowingly swear falsely concerning any matter whatsoever, shall be guilty of perjury in the second degree and shall be punished by imprisonment in the state penitentiary for not more than five years, or by imprisonment in the county jail for not more than one year.

Covers perjury before administrative and quasi judicial officers—not included in first degree, State v. Wilson 83 W. 419.

the sanctity of an oath or affirmation administered by a duly authorized and qualified officer, State v. Dallagiovanna, 69 W.

“Swear” means to state a fact under 84.

**§9035. “Oath” and “Swear” Defined.** §102. The term “oath” shall include an affirmation and every other mode authorized by law of attesting the truth of that which is stated. A person who shall state any matter under oath shall be deemed to “swear” thereto.

Charge of perjury may be predicated on mere voluntary affidavit before a notary public, State v. Howard 91 W. 481.

**§9036. Irregularity in Oath or Incompetency of Witness No Defense.** §103. It shall be no defense to a prosecution for perjury that an oath was administered or taken in an irregular manner or that the defendant was not competent to give the testimony, deposition, certificate or affidavit of which falsehood is alleged. It shall be sufficient that he actually gave such testimony or made such deposition, certificate or affidavit. N.Y.P.C. §§97-8; Minn. C. '05 §4832.

**§9037. Deposition—When Complete.** §104. The making of a deposition, certificate or affidavit shall be deemed to be complete when it is subscribed and sworn to or affirmed by the defendant with intent that it be uttered or published as true. N.Y.P.C. §100; Minn. C. '05 §4834.



**§9038. Statement of What One Does Not Know to Be True.** §105. Every unqualified statement of that which one does not know to be true is equivalent to a statement of that which he knows to be false. N.Y.P.C. §101; Minn. C. '05 §4835.

**§9039. Offering False Evidence.** §106. Every person who, upon any trial, hearing, inquiry, investigation or other proceeding authorized by law, shall offer or procure to be offered in evidence, as genuine, any book, paper, document, record or other instrument in writing, knowing the same to have been forged or fraudulently altered, shall be punished by imprisonment in the state penitentiary for not more than ten years. Minn. C. '05 §4838.

**§9040. Committal of Witness—Detention of Documents.** §107. Whenever it shall appear probable to a judge, justice of the peace, magistrate, or other officer lawfully authorized to conduct any hearing, proceeding or investigation, that a person who has testified before him has committed perjury in any testimony so given, or offered any false evidence, he may, by order or process for that purpose, immediately commit such person to jail or take a recognizance for his appearance to answer such charge. In such case he may detain any book, paper, document, record or other instrument produced before him or direct it to be delivered to the prosecuting attorney. N.Y.P.C. §§102, 104; Minn. C. '05 §4836.

**§9041. Subornation of Perjury.** §108. Every person who shall wilfully procure another to commit perjury, in either degree, or to offer any false evidence, shall be guilty of subornation of perjury and shall be punished in the same manner as if he had himself committed the perjury so procured or offered the false evidence so offered. N.Y.P.C. §105; Minn. C. '05 §4837.

**§9042. Attempts.** §109. Every person who, without giving, offering or promising a bribe, shall incite or attempt to procure another to commit perjury, in either degree, or to offer any false evidence, or to withhold true testimony, though no perjury be committed or false evidence offered or true testimony withheld, shall be guilty of a gross misdemeanor. Minn. C. '05 §4841.

Attempts generally, how punished, §8699.

**§9043. Destroying Evidence.** §110. Every person who, with intent to conceal the commission of any felony, or to protect or conceal the identity of any person committing the same, or with intent to delay or hinder the administration of the law or to prevent the production thereof at any time, in any court or before any officer, tribunal, judge or magistrate, shall wilfully destroy, alter, erase, obliterate or conceal any book, paper, record, writing, instrument or thing, shall be guilty of a gross misdemeanor. N.Y.P.C. §110; Minn. C. '05 §4839.

**§9044. Tampering With Witness.** §111. Every person who shall wilfully prevent or attempt to prevent, by persuasion, threats or otherwise, any person from appearing before any court, or officer authorized to subpoena witnesses, as a witness in any action, proceeding or investigation, with intent thereby to obstruct the course of justice, shall be guilty of a gross misdemeanor. N.Y.P.C. §111.

Elements of crime—subpoena issued not necessary, *State v. Bringgold* 40 W. 12.

## PRIZE FIGHTING, ETC.

### Prize Fighting.

**§9045. Prize Fighting, Aiding or Abetting, Etc.** §304. Every person who shall engage in, instigate, aid, encourage, or do any act to further an encounter or fight with or without weapons, between two or more persons, or a fight commonly called a ring or prize fight, or an encounter commonly called a sparring match, with or without gloves, or who shall send a challenge or acceptance of a challenge for such an encounter or fight; or who shall carry or deliver such a challenge or acceptance, or shall train or assist any person in training or preparing for such an encounter or fight; or who shall bet, stake or wager money or other property upon the

result of such encounter or fight; or held or undertake to hold any money or other property so staked or wagered, to be delivered to or for the benefit of the winner thereof, shall be guilty of a gross misdemeanor: Provided, That nothing in this section shall be so construed as to interfere with members of private clubs sparring or fencing for exercise among themselves. N.Y.P.C. §458; Minn. C. '05 §§5020-1.

**§9046. Apprehension of Persons.** §305. Whenever it shall be made to appear to any magistrate that there are reasonable grounds to apprehend that a person specified in section 304 of this act is about to be

## PUBLIC CONTRACTS

**AN ACT** making it unlawful to suppress or eliminate competitive bidding upon public work within the State of Washington, and providing penalties for violation thereof. [Emergency] L. '21 ch. 12.

**§9046-1. Fraud in Bids a Crime.** §1. When any competitive bid or bids are to be or have been solicited, requested, or advertised for by the State of Washington, or any county, city, town or other municipal corporation therein, or any department of either thereof, for any work or improvement to be done or constructed for or by such state, county, city, town, or other municipal corporation, or any department of either thereof, it shall be unlawful for any person acting for himself or as agent of another, or as agent of or as a member of any partnership, unincorporated firm or association, or as an officer or agent of any corporation, to offer, give, or promise to give, any money, check, draft, property, or other thing of value, to another or to any firm, association, or corporation for the purpose of inducing such other person, firm, association, or corporation, either to refrain from submitting any bids upon such public work or improvement, or to enter into any agreement, understanding or arrangement whereby full and unrestricted competition for the securing of such public work will be suppressed, prevented, or eliminated; and it shall be unlawful for any person to solicit, accept, or receive any money, check, draft, property, or other thing of value upon a promise or understanding, express or implied, that he individually or as an agent or officer of another person, persons, or corporation, will refrain from bidding upon such public work or improvement, or that he will on behalf of himself or such others submit or permit another to submit for him any bid upon such public work or improvement in such sum as to eliminate full and unrestricted competition thereon.

**§9046-2. Collusion a Crime.** §2. It shall be unlawful for any person for himself or as an agent or officer of any other person, persons, or corporation to in any manner enter into collusion or an understanding with any other person, persons, or corporation to prevent or eliminate full and unrestricted competition upon any public work or improvement mentioned in section 1 of this act.

**§9046-3. Gross Misdemeanor.** §3. Any person violating any provisions of this act shall be guilty of a gross misdemeanor.

**§9046-4. Outside State No Defense.** §4. It shall be no defense to a prosecution under this act that a payment or promise of payment of any money, check, draft, or anything of value, or any other understanding or arrangement to eliminate unrestricted competitive bids was had or made outside of the State of Washington, if such work or improvement for which bids are called is to be done or performed within the state.

**§9048. Asking or Receiving Bribe.** §5. Every executive or administrative officer or person elected or appointed to an executive or administrative office who shall ask or receive, directly or indirectly, any compensation, gratuity or reward, or any promise thereof, upon an agreement or understanding that his vote, opinion or action upon any matter then pending, or which may by law be brought before him in his official capacity, shall be influenced thereby; and every member of either house of the legislature of the state who shall ask or receive, directly or indirectly, any compensation, gratuity or



§9038. **Statement of What One Does Not Know to Be True.** §105. Every unqualified statement of that which one does not know to be true is equivalent to a statement of that which he knows to be false. N.Y.P.C. §101; Minn. C. '05 §4835.

§9039. **Offering False Evidence.** §106. Every person who, upon any trial, hearing, inquiry, investigation or other proceeding authorized by law, shall offer or procure to be offered in evidence, as genuine, any book, paper, document, record or other instrument in writing, knowing the same to have been forged or fraudulently altered, shall be punished by imprisonment in the

an encounter or fight with or without weapons, between two or more persons, or a fight commonly called a ring or prize fight, or an encounter commonly called a sparring match, with or without gloves, or who shall send a challenge or acceptance of a challenge for such an encounter or fight; or who shall carry or deliver such a challenge or acceptance, or shall train or assist any person in training or preparing for such an encounter or fight; or who shall bet, stake or wager money or other property upon the

result of such encounter or fight; or held or undertake to hold any money or other property so staked or wagered, to be delivered to or for the benefit of the winner thereof, shall be guilty of a gross misdemeanor: Provided, That nothing in this section shall be so construed as to interfere with members of private clubs sparring or fencing for exercise among themselves. N.Y.P.C. §458; Minn. C. '05 §§5020-1.

**§9046. Apprehension of Persons.** §305. Whenever it shall be made to appear to any magistrate that there are reasonable grounds to apprehend that an offense specified in section 304 of this act is about to be committed within his jurisdiction, or by any person therein, he shall issue his warrant for the arrest of the person or persons so about to offend, and if upon any such person being brought before him it shall appear that there is reasonable ground to believe that he is about to commit such an offense he shall require him to give bond to the state, approved by him, in a sum not exceeding one thousand dollars, with or without sureties, conditioned that such person shall not within one year thereof commit such an offense. On failure to furnish such bond such person shall be committed to the county jail. N.Y.P.C. §463; Minn. C.'05 §5022.

## PUBLIC OFFICERS, ETC.

### CHAPTER 4.—Crimes by or Against Public Officers. Bribery and Corruption.

**§9047. Bribery of Public Officer.** §68. Every person who shall give, offer or promise, directly or indirectly, any compensation, gratuity or reward to any executive or administrative officer of the state, with intent to influence him with respect to any act, decision, vote, opinion or other proceeding, as such officer; or who shall give, offer or promise, directly or indirectly, any compensation, gratuity or reward to a member of the legislature, or attempt, directly or indirectly, by menace, deceit, suppression of truth or other corrupt means, to influence such member to give or withhold his vote or to absent himself from the house of which he is a member or from any committee thereof; or who shall give, offer or promise, directly or indirectly, any compensation, gratuity or reward to a judicial officer, juror, referee, arbitrator, appraiser, assessor or other person authorized by law to hear or determine any question, matter, cause, proceeding or controversy, with intent to influence his action, vote, opinion or decision thereupon; or who shall give, offer or promise, directly or indirectly, any compensation, gratuity or reward to a person executing any of the functions of a public officer other than as hereinbefore specified, with intent to influence him with respect to any act, decision, vote or other proceeding in the exercise of his powers or functions, shall be punished by imprisonment in the state penitentiary for not more than ten years, or by a fine of not more than five thousand dollars, or by both. N.Y.P.C. §§44, 66, 74, 78; Minn. C.'05 §4799.

Crimes, blanket penalty §8703.

Crimes by "wilfully disobeying any law §8812; embezzlement and falsification of accounts, §8811; false acknowledgment or proof, §8860; extortion oppression, etc., by or under color of, §8824; solemnizing unlawful marriage, §8834.

Crimes against: resisting, §§9058, 9070; obstructing, etc., §9066.

Records, larceny of, §8948.

Claim, presenting fraudulent to, §8879.

Headlines in newspaper indicating crime but not charging crime to person is not libelous per se, *Wood v. Star Pub. Co.* 90 W. 85.

Applies to bribery of a city policeman, *State v. Nick*, 66 W. 134.

Thing offered must be of value, offered to one known to be an officer with intent to influence, 66 Minn. 309; 68 N. W. 1096.

Charge held good, *State v. Womack* 4 W. 19.

**§9048. Asking or Receiving Bribe.** §69. Every executive or administrative officer or person elected or appointed to an executive or administrative office who shall ask or receive, directly or indirectly, any compensation, gratuity or reward, or any promise thereof, upon an agreement or understanding that his vote, opinion or action upon any matter then pending, or which may by law be brought before him in his official capacity, shall be influenced thereby; and every member of either house of the legislature of the state who shall ask or receive, directly or indirectly, any compensation, gratuity or



reward, or any promise thereof, upon an agreement or understanding that his official vote, opinion, judgment or action shall be influenced thereby, or shall be given in any particular manner, or upon any particular side of any question or matter upon which he may be required to act in his official capacity; and every judicial officer, and every person who executes any of the functions of a public office not hereinbefore specified, and every person employed by or acting for the state or for any public officer in the business of the state, who shall ask or receive, directly or indirectly, any compensation, gratuity or reward or any promise thereof, upon an agreement or understanding that his vote, opinion, judgment action, decision or other official proceeding shall be influenced thereby, or that he will do or omit any act or proceeding or in any way neglect or violate any official duty, shall be punished by imprisonment in the state penitentiary for not more than ten years, or by a fine of not more than five thousand dollars, or by both. N.Y.P.C. §§45, 67, 72; Minn. C.'05 §4800.

Both soliciting and accepting a bribe 130, 92 N. W. 529.  
 may be charged in one indictment, State v. Wappenstein, 67 W. 502. Bribe taker soliciting and "ready and willing" offense is complete, 73 Minn. 150.  
 Policeman is within statute, 88 Minn. 75 N. W. 1127.

**§9049. Juror, etc., Accepting Bribe.** §70. Every juror, referee, arbitrator, appraiser, assessor or other person authorized by law to hear or determine any question, matter, cause, controversy or proceeding, who shall ask or receive, directly or indirectly, any compensation, gratuity or reward, or any promise thereof, upon an agreement or understanding that his vote, opinion, action, judgment or decision shall be influenced thereby, shall be punished by imprisonment in the state penitentiary for not more than ten years, or by fine of not more than five thousand dollars, or by both. N.Y.P.C. §74; Minn. C.'05 §4801.

**§9050. Bribing Witness.** §71. Every person who shall give, offer or promise, directly or indirectly, any compensation, gratuity or reward to any witness or person who may be called as a witness, upon an agreement or understanding that the testimony of such witness shall be thereby influenced, or who shall wilfully attempt by any other means to induce any witness or person who may be called as a witness to give false testimony, or to withhold true testimony, shall be punished by imprisonment in the state penitentiary for not more than ten years, or by a fine of not more than five thousand dollars, or by both. N.Y.P.C. §113; Minn. C.'05 §4802.

In charge for tampering with witness persuasion and offer of money not duplicat-  
 that justice was "authorized to subpoena tous, State v. Wingard 92 W. 219.  
 witnesses" is not necessary allegation—

**§9051. Witness Accepting Bribe.** §72. Every person who is or may be a witness upon a trial, hearing, investigation or other proceeding before any court, tribunal or officer authorized to hear evidence or take testimony, who shall ask or receive, directly or indirectly, any compensation, gratuity or reward, or any promise thereof, upon an agreement or understanding that his testimony shall be influenced thereby, or that he will absent himself from the trial, hearing or other proceeding, shall be punished by imprisonment in the state penitentiary for not more than ten years, or by a fine of not more than five thousand dollars, or by both. N.Y.P.C. §80; Minn. C.'05 §4803.

Affiant in support of motion for new trial is "witness", State v. Dooley 82 W 483.

**§9052. Influencing Juror.** §73. Every person who shall influence, or attempt to influence, improperly, a juror in a civil or criminal action or any proceeding, or any person chosen or appointed as an arbitrator or referee, in respect to his verdict, judgment, report, award or decision in any cause or matter pending or about to be brought before him, in any case or in any manner not hereinbefore provided for, shall be guilty of a gross misdemeanor. N.Y.P.C. §75; Minn. C.'05 §4804.

**§9053. Juror, Etc., Promising Verdict, Etc.** §74. Every juror and every person chosen or appointed arbitrator or referee, who shall make any promise or agreement to give a verdict, judgment, report, award or decision for or against any party, or who shall wilfully receive any communication, book, paper, instrument or information relating to a cause or matter pending before

him, except according to the regular course of proceeding upon the trial or hearing of such cause or matter, shall be guilty of a gross misdemeanor. N.Y.P.C. §173; Minn. C. '05 §4805.

**§9054. Misconduct of Officer Drawing Jury. §75.** Every person charged by law with the preparation of any jury list or list of names from which any jury is to be drawn, and every person authorized by law to assist at the drawing of a grand or petit jury to attend a court or term of court or to try any cause or issue, who shall—

1. Place in any such list any name at the request or solicitation, direct or indirect, of any person; or

2. Designedly put upon the list of jurors, as having been drawn, any name which was not lawfully drawn for that purpose; or

3. Designedly omit to place upon such list any name which was lawfully drawn; or

4. Designedly sign or certify a list of such jurors as having been drawn which were not lawfully drawn; or

5. Designedly and wrongfully withdraw from the box or other receptacle for the ballots containing the names of such jurors any paper or ballot lawfully placed or belonging there and containing the name of a juror, or omit to place therein any name lawfully drawn or designated, or place therein a paper or ballot containing the name of a person not lawfully drawn and designated as a juror; or

6. In drawing or empaneling such jury, do any act which is unfair, partial or improper in any respect,

Shall be guilty of a gross misdemeanor. N.Y.P.C. §76; Minn. C. '05 §4806.

**§9055. Soliciting Jury Duty. §76.** Every person who shall, directly or indirectly, solicit or request any person charged with the duty of preparing any jury list to put his name, or the name of any other person, on any such list, shall be guilty of a gross misdemeanor. Minn. C. '05 §4807

**§9056. Misconduct of Officer in Charge of Jury. §77.** Every person to whose charge a jury shall be committed by a court or magistrate, who shall knowingly, without leave of such court or magistrate, permit them or any one of them to receive any communication from any person, to make any communication to any person, to obtain or receive any book, paper or refreshment, or to leave the jury room, shall be guilty of a gross misdemeanor. N.Y.P.C. §77; Minn. C. '05 §4808.

**§9057. Offender Shall Give Evidence. §78.** Every person offending against any of the provisions of law relating to bribery or corruption shall be a competent witness against another so offending and shall not be excused from giving testimony tending to criminate himself. N.Y.P.C. §79. Minn. C. '05 §4809.

Incriminating testimony not to be used, Const., art. 1, §9, §8726.

**§9058. Interfering With Public Officer. §79.** Every person who, by means of any threat, force or violence, shall attempt to deter or prevent any executive or administrative officer from performing any duty imposed upon him by law, or who shall knowingly resist by force or violence any executive or administrative officer in the performance of his duty, shall be guilty of a gross misdemeanor. N.Y.P.C. §§46-7; Minn. C. '05 §4810.

**§9059. Offering Reward for Appointment. §80.** Every person who shall give, offer or promise, directly or indirectly, any compensation, gratuity or reward, in consideration that he or another person shall be appointed to a public office or to a clerkship, deputation or other subordinate position in such office, or that he or any person shall be permitted to exercise, perform or discharge any prerogative or duty or receive any emolument of such office, shall be guilty of a gross misdemeanor. N.Y.P.C. §52; Minn. C. '05 §4811.

**§9060. Grafting. §81.** Every person who shall ask or receive any compensation, gratuity or reward, or any promise thereof, upon the representation that he can, directly or indirectly, or in consideration that he shall, or shall attempt to, directly or indirectly, influence any public officer, whether



executive, administrative, judicial or legislative, to refuse, neglect, or defer the performance of any official duty; or who shall ask or receive any compensation, gratuity or reward, or any promise thereof, the right to retain or receive which shall be conditioned that such person shall, directly or indirectly, successfully influence by any means whatever any executive, administrative or legislative officer, in respect to any act, decision, vote, opinion or other proceeding, as such officer; or who shall ask or receive any compensation, gratuity or reward, or any promise thereof, upon the representation that he can, directly or indirectly, or in consideration that he shall, or shall attempt to, directly or indirectly, influence any public officer, whether executive, administrative, judicial or legislative, in respect to any act, decision, vote, opinion or other proceeding, as such officer, unless it be clearly understood and agreed in good faith between the parties thereto, on both sides, that no means or influence shall be employed except explanation and argument upon the merits, shall be guilty of a gross misdemeanor, and, in any prosecution, under the third clause of this section, evidence of the means actually employed to influence such officer shall be admitted as proof of the means originally contemplated by the defendant

Charge under three paragraphs not duplications—conviction sustained on the facts. State v. Roberts 100 W. 493. mayor's campaign fund, promising not to molest donee, is grafting, State v. Shea 78 W. 342.

Grafting by employee, §8911; aiding escape from penitentiary, §4385. Includes offer to influence prosecuting attorney to dismiss pending prosecution, State v. Marion, 68 W. 675.

Campaign worker demanding \$25 for the State v. Marion, 68 W. 675.

**§9061. Misconduct of Public Officer.** §82. Every public officer who shall—

1. Ask or receive, directly or indirectly, any compensation, gratuity or reward, or promise thereof, for omitting or deferring the performance of any official duty; or for any official service which has not been actually rendered, except in case of charges for prospective costs or fees demandable in advance in a case allowed by law; or

2. Be beneficially interested, directly or indirectly, in any contract, sale, lease or purchase which may be made by, through or under the supervision of such officer, in whole or in part, or which may be made for the benefit of his office, or accept, directly or indirectly, any compensation, gratuity or reward from any other person beneficially interested therein; or

3. Employ or use any person, money or property under his official control or direction, or in his official custody, for the private benefit or gain of himself or another;

Shall be guilty of a gross misdemeanor, and any contract, sale, lease or purchase mentioned in subdivision 2 hereof shall be void. N.Y.P.C. §§48-53; Minn. C. '05 §4812.

Recall charging misfeasance for malfeasance sustained, Thiemens v. Sanders 102 W. 453.

**§9062. Grant of Official Powers.** §83. Every public officer who, for any reward, consideration or gratuity paid or agreed to be paid, shall, directly or indirectly, grant to another the right or authority to discharge any function of his office, or permit another to perform any of his duties, shall be guilty of a gross misdemeanor. N.Y.P.C. §54; Minn. C. '05 §4813.

**§9063. Intrusion Into and Refusal to Surrender Public Office.** §84. Every person who shall falsely personate or represent any public officer, or who shall wilfully intrude himself into a public office to which he has not been duly elected or appointed, or who shall wilfully exercise any of the functions or perform any of the duties of such officer, without having duly qualified therefor, as required by law, or who, having been an executive or administrative officer, shall wilfully exercise any of the functions of his office after his right to do so has ceased, or wrongfully refuse to surrender the official seal or any books or papers appertaining to such office, upon the demand of his lawful successor, shall be guilty of a gross misdemeanor. N.Y.P.C. §§56-7; Minn. Co. '05 §4814.

**§9064. Disturbing Legislature.** §85. Every person who shall wilfully disturb the legislature of this state, or either house thereof, while in session, or who shall commit any disorderly conduct in the presence or view of

either house thereof, tending to interrupt its proceedings or impair the respect due to its authority, or who wilfully, by intimidation or otherwise, shall prevent any member of the legislature from attending any session of the house of which he shall be a member or any committee thereof, or from giving his vote upon any question which may come before such house or committee, or from performing any other official act, shall be guilty of a gross misdemeanor. N.Y.P.C. §§60-2; Minn. C. '05 §4815.

**§9065. Witness Refusing Evidence to Legislature.** §86. Every person duly summoned to attend as a witness before either house of the legislature of this state or any committee thereof authorized to summon witnesses, who shall refuse or neglect, without lawful excuse, to attend pursuant to such summons, or who shall wilfully refuse to be sworn or to affirm or to answer any material or proper question or to produce, upon reasonable notice, any material or proper books, papers or documents in his possession or under his control, shall be guilty of a gross misdemeanor. N.Y.P.C. §§68-9; Minn. C. '05 §4818.

**§9066. Obstructing Public Officer.** §420. Every person who, after due notice, shall refuse or neglect to make or furnish any statement, report or information lawfully required of him by any public officer, or who, in such statement, report or information shall make any wilfully untrue, misleading or exaggerated statement, or who shall wilfully hinder, delay or obstruct any public officer in the discharge of his official powers or duties, shall be guilty of a misdemeanor.

**Resisting officer, §9070.**

**§9067. Acting Without Lawful Authority.** §421. Every person who shall in any case not otherwise specially provided for, do any act, for the doing of which a license or other authority is required by law, without having such license or other authority as required by law, shall be guilty of a misdemeanor.

**Corporation without license, etc., §8898. side city a misdemeanor, State v. Ray, Selling intoxicants without license out- 62 W. 245.**

**Refusal to Receive a Person Into Custody.** §112. Every officer who, in violation of any legal duty, shall wilfully neglect or refuse to receive a person into his official custody or into a prison under his charge, shall, in a case where no other punishment is specially provided by law, be guilty of a gross misdemeanor. N.Y.P.C. §116; Minn. C. '05 §4842.

**§9069. Refusal to Make Arrest or Aid Officer.** §113. Every person who, after having been lawfully commanded by any magistrate to arrest another person, shall wilfully neglect or refuse so to do; and every person who, after having been lawfully commanded to aid an officer in arresting any person, or in retaking any person who has escaped from lawful custody, or in executing any lawful process, shall wilfully neglect or refuse to aid such officer, shall be guilty of a misdemeanor. N.Y.P.C. §§121-2; Minn. C. '05 §4847.

**Plaintiff loitered on boat on which he aided by purser, company held not liable, had traveled, was arrested by policeman Duval v. Inland Navigation Co. 90 W. 149.**

**§9070. Resisting Officer.** §114. Every person who, in any case or under any circumstances not otherwise specially provided for, shall wilfully resist, delay or obstruct a public officer in discharging or attempting to discharge any legal duty of his office, shall be guilty of a misdemeanor. N.Y.P.C. §124; Minn. C. '05 §4848.

**Interfering with officer, §9058; obstructing, §9066. See particular subjects. "Legal" process must be alleged—firmity known by officer may be shown, Combination to resist, §9074. State v. Knapf 50 W. 229.**

**§9071. Intimidating Public Officer.** §116. Every Person who shall, directly or indirectly, address any threat or intimidation to a public officer or to a juror, referee, arbitrator, appraiser or assessor, or to any other person authorized by law to hear or determine any controversy or matter, with intent to induce him, contrary to his duty, to do or make or to omit or delay any act, decision or determination, shall be guilty of a misdemeanor. N.Y.P.C. §127; Minn. C. '05 §4850.



**§9072. Public Officer Making False Certificate.** §128. Every public officer who, being authorized by law to make or give a certificate or other writing, shall knowingly make and deliver as true such a certificate or writing containing any statement which he knows to be false in a case where the punishment thereof is not expressly prescribed by law, shall be guilty of a gross misdemeanor. N.Y.P.C. §163; Minn. C. '05 §4864.

False reports generally, §9088; acknowledgment, etc., §8860.

**§9073. Paying False Claims.** §129. Every Public officer or person holding or discharging the duties of any public office or place of trust under the state or in any county, town or city, a part of whose duty it is to audit, allow or pay, or take part in auditing, allowing or paying, claims or demands upon the state or such county, town or city, who shall knowingly audit, allow or pay, or, directly or indirectly, consent to or in any way connive at the auditing, allowance or payment of any claim or demand against the state or such county, town or city, which is false or fraudulent or contains any charge, item or claim which is false or fraudulent, shall be guilty of a gross misdemeanor. N.Y.P.C. §165; Minn. C. '05 §4865.

Words "false or fraudulent" defined, *State v. Case* 88 W. 664.

**§9074. Combination to Resist Process.** §303. Every person who shall enter into a combination with another to resist the execution of any legal process or other mandate of a court of competent jurisdiction, under circumstances not amounting to a riot, shall be guilty of a gross misdemeanor. N.Y.P.C. §457; Minn. C. '05 §5019.

Resisting officer, §9070.

## PUBLIC PEACE.

### CHAPTER VIII.—Crimes Against the Public Peace.

**§9075. Armed Association.** §294. It shall not be lawful for any body of men other than the National Guard or troops of the United States, to associate themselves together as a military company with arms, without the consent of the Governor; but members of social and benevolent associations are not prohibited from wearing swords. Every person who shall associate with others in violation of this section shall be guilty of a misdemeanor.

Former act valid under Const., art. 1, §24—"employ" defined, *State v. Gohl* 46 W. 408.

**§9076. Disturbing Meeting.** §295. Every person who, without [authority] of law, shall wilfully disturb any assembly or meeting not unlawful in its character, shall be guilty of a misdemeanor. N.Y.P.C. §448; Minn. C. '05 §5013.

Disturbing religious meeting, §9127; public school, §5201.

**§9077. Offenses in Public Conveyances.** §309. Every person who shall wilfully use profane, offensive, or indecent language or engage in any quarrel in any public conveyance, or interfere with or annoy any passenger therein, or, having refused to pay the proper fare, shall fail to leave any such conveyance upon demand, or, with intent to avoid the payment of fare shall ride upon any car or engine not commonly used for the carriage of passengers, shall be guilty of a misdemeanor. Minn. C. '05 §5026.

**§9078. Riot Defined.** §296. Whenever three or more persons, having assembled for any purpose, shall disturb the public peace by using force or violence to any other person, or to property, or shall threaten or attempt to commit such disturbance, or to do any unlawful act by the use of force or violence, accompanied with the power of immediate execution of such threat or attempt, they shall be guilty of a riot. N.Y.P.C. §449; Minn. C. '05 §5014.

This section does not authorize peace officers to order out militia, *Chapin v. Ferry* 3 W. 386.

**§9079. — Penalty.** §297. Every person who shall be guilty of riot or of participating therein, by being present at, or by instigation, permitting or aiding the same, shall be punished as follows:

1. If the purpose of the assembly or the acts done therein, or intended by the persons engaged, shall be to resist the enforcement of a statute of this

state or of the United States, or to obstruct any public officer of this state or the United States in serving or executing any process or other mandate of a court, or in the performance of any other duty, or if at the time of the riot the offender shall carry a firearm or any other dangerous weapon, or shall be disguised, by imprisonment in the state penitentiary for not more than five years, or by a fine of not more than one thousand dollars.

2. If the offender shall direct, advise, encourage or solicit other persons present or participating in a riot or assembly to acts of force or violence, by imprisonment in the state penitentiary for not more than two years, or by a fine of not more than one thousand dollars.

3. In every other case, by imprisonment in the county jail for not more than one year, or by a fine of not more than one thousand dollars. N.Y.P.C. §450; Minn. C. '05 §5015.

**§9080. Unlawful Assembly. §298.** Whenever three or more persons shall assemble with intent—

1. To commit any unlawful act by force; or,

2. To carry out any purpose in such manner as to disturb the public peace; or,

3. Being assembled, shall attempt or threaten any act tending toward a breach of the peace, or an injury to persons or property, or any unlawful act—such an assembly is unlawful, and every person participating therein by his presence, aid or instigation, shall be guilty of a gross misdemeanor. N.Y.P.C. §451; Minn. C. '05 §5016.

**§9081. Remaining After Warning. §299.** Every person who shall remain present at the place of an unlawful meeting after having been warned to disperse by a magistrate or public officer, unless as a public officer or at the request of such officer he is assisting in dispersing the same, or in protecting persons or property or in arresting offenders, shall be guilty of a misdemeanor. N.Y.P.C. §454; Minn. C. '05 §5017.

**§9082. Destruction of Property. §300.** Whenever any of the persons so unlawfully assembled shall pull down or destroy any dwelling house or other building, or any shop, steamboat or vessel, he shall be punished by imprisonment in the state penitentiary for not more than five years, or by a fine of not more than one thousand dollars. Minn. C. '05 §5018.

**§9083. Disguised and Masked Persons. §301.** Any assemblage of three or more persons, disguised by having their faces painted, discolored, colored or concealed shall be unlawful; and every person so disguised present thereat, shall be guilty of a gross misdemeanor; but nothing herein shall be construed as prohibiting any peaceful assemblage for a masquerade or fancy dress ball or entertainment. N.Y.P.C. §452.

**§9084. Owner of Premises Allowing Masqueraders. §302.** Every person, being the owner, lessee or occupant of any building, boat, or part thereof, who shall knowingly permit therein any unlawful assemblage of masked persons, shall be guilty of a gross misdemeanor. N.Y.P.C. §453.

## PUBLIC RECORDS.

### Public Records.

**§9085. Injury to Public Record. §95.** Every person who shall wilfully and unlawfully remove, alter, mutilate, destroy, conceal or obliterate a record, map, book, paper, document or other thing filed or deposited in a public office, or with any public officer, by authority of law, shall be punished by imprisonment in the state penitentiary for not more than five years, or by a fine of not more than one thousand dollars, or by both. N.Y.P.C. §94; Minn. C. '05 §4828.

**§9086. Misappropriation of Record. §96.** Every officer who shall mutilate, destroy, conceal, erase, obliterate or falsify any record or paper appertaining to his office, or who shall fraudulently appropriate to his own use or to



the use of another person, or secrete with intent to appropriate to such use, any money, evidence of debt or other property intrusted to him by virtue of his office, shall be punished by imprisonment in the state penitentiary for not more than ten years, or by a fine of not more than five thousand dollars, or by both. Minn. C. '05 §4829.

**§9087. Offering False Instrument for Record.** §97. Every person who shall knowingly procure or offer any false or forged instrument to be filed, registered or recorded in any public office, which instrument, if genuine, might be filed, registered or recorded in such office under any law of this state or of the United States, shall be punished by imprisonment in the state penitentiary for not more than five years, or by a fine of not more than five thousand dollars, or by both. N.Y.P.C. §95; Minn. C. '05 §4830.

**§9088. False Report.** §98. Every public officer who shall knowingly make any false, or misleading statement in any official report or statement, under circumstances not otherwise prohibited by law, shall be guilty of a gross misdemeanor.

False report or divulging information, ment, proof, etc., §8860.  
state lands, §6348.

See Banks, Elections, etc.

False certificates, §9072; acknowledge-

## PUBLIC SAFETY.

**§9089. Engineer Who Cannot Read.** §274. Every person who, as an officer of a corporation or otherwise, shall knowingly employ as an engineer or engine driver, to run a locomotive or train on any railway, any person who cannot read time tables and ordinary handwriting; and every person who, being unable to read time tables and ordinary handwriting, shall act as an engineer or run a locomotive or train on any railway, shall be guilty of a gross misdemeanor. N.Y.P.C. §418; Minn. C. '05 §4999.

**§9090. Intoxication While Operating Railways, Steamers, or Vehicles.** §275. Every person who, being employed upon any railway, as engineer, motorman, gripman, conductor, switch tender, fireman, bridge tender, flagman or signalman, or having charge of stations, starting, regulating or running trains upon a railway, or being employed as captain, engineer or other officer of a vessel propelled by steam, or being the driver of any animal or vehicle upon any public highway, street, or other public place, shall be intoxicated while engaged in the discharge of any such duties, shall be guilty of a gross misdemeanor. L. 15 492, R.&B. §2527.

**§9091. Engineer, Failure to Ring Bell.** §276. Every engineer driving a locomotive on any railway who shall fail to ring the bell or sound the whistle upon such locomotive, or cause the same to be rung or sounded at least eighty rods from any place where such railway crosses a traveled road or street on the same level (except in cities), or to continue the ringing of such bell or sounding of such whistle until such locomotive shall have crossed such road or street, shall be guilty of a misdemeanor. N.Y.P.C. §421; Minn. C. '05 §5001.

Failure to sound bell or whistle continuously until crossing reached is negligence as a matter of law—fact of ringing for jury—building on right of way—auto- mobile driver held guilty of contributory negligence, *McKinney v. Port Townsend & P. S. R. Co.* 91 W. 387.

Cruelty to stock in transit 163 §101.

**§9092. Trainmen, Other Violations.** §277. Every engineer, motorman, gripman, conductor, brakeman, switch tender, train dispatcher or other officer, agent or servant of any railway company, who shall be guilty of any wilful violation or omission of his duty as such officer, agent or servant, by which human life or safety shall be endangered, for which no punishment is specially prescribed, shall be guilty of a misdemeanor. Minn. C. '05 §5002.

**§9093. Obstructing and Delaying Trains.** §278. Every person who shall wilfully obstruct, hinder or delay the passage of any car lawfully operated upon any railway, shall be guilty of a misdemeanor. Minn. C. '05 §5177.

**Speed of Automobile. §279. Repealed. L. 17 641.**

Automobiles act, §196; glass, etc., on road, §5992. A complaint in justice court charging that defendant, at a stated place, drove an automobile in excess of twenty miles an hour, is insufficient, *State v. Hall*, 64 W.

Pedestrian stopped on crossing held he could recover for being struck by automobile going at 12 miles per hour, *Anderson v. Kinnear* 80 W. 638. 99.

**§9094. Liability of Person Handling Steamboat or Steam Boiler. §280.**

Every person who shall apply, or cause to be applied to a steam boiler a higher pressure of steam than is allowed by law, or by any inspector, officer or person authorized to limit the same; every captain or other person having charge of the machinery or boiler in a steamboat used for the conveyance of passengers on the waters of this state, who, from ignorance or gross neglect, or for the purpose of increasing the speed of such boat, shall create or cause to be created an undue or unsafe pressure of steam; and every engineer or other person having charge of a steam boiler, steam engine or other apparatus for generating or employing steam, who shall wilfully or from ignorance or gross neglect, create or allow to be created such an undue quantity of steam as to burst the boiler, engine or apparatus, or cause any other accident, whereby human life is endangered, shall be guilty of a gross misdemeanor.

**§9095. Endangering Life by Refusal to Labor. §281.** Every person who shall wilfully and maliciously, either alone or in combination with others, break a contract of service or employment, knowing or having reasonable cause to believe that the consequence of his so doing will be to endanger human life or to cause grievous bodily injury, or to expose valuable property to destruction or serious injury, shall be guilty of a misdemeanor.

**§9096. Disturbance on Highway. §282.** Every person who shall ride or drive any horse upon a public highway, in a manner likely to endanger the safety or life of another, or on such highway shall create or participate in any noise, disturbance or other demonstration calculated or intended to frighten, intimidate or disturb any person, shall be guilty of a misdemeanor.

Highway by user and a cul de sac obstructed by felling tree. *State v. Rixie* 50 W. 676.

**§9097. Dangerous Exhibitions. §283.** Every proprietor, lessee or occupant of any place of amusement, or any plat of ground or building, who shall allow it to be used for the exhibition of skill in throwing any sharp instrument or in shooting any bow-gun, pistol or firearm of any description, at or toward any human being, shall be guilty of a misdemeanor.

**§9098. Deposit of Unwholesome Substance. §285.** Every person who shall deposit, leave or keep, on or near a highway or route of public travel, on land or water, any unwholesome substance; or who shall establish, maintain or carry on, upon or near a highway or route of public travel, on land or water, any business, trade or manufacture which is noisome or detrimental to the public health; or who shall deposit or cast into any lake, creek or river, wholly or partly in this state, the offal from or the dead body of any animal, shall be guilty of a gross misdemeanor. N.Y.P.C. §431; Minn. C. '05 §5007.

**§9099. Vicious Animal at Large. §286.** Every person having the care or custody of any animal known to possess any vicious or dangerous tendencies, who shall allow the same to escape or run at large in any place or manner liable to endanger the safety of any person, shall be guilty of a misdemeanor; and any person may lawfully kill such animal when reasonably necessary to protect his own or the public safety.

**§9100. Exposing Contagious Disease. §287.** Every person who shall wilfully expose himself to another, or any animal affected with any contagious or infectious disease, in any public place or thoroughfare, except upon his or its necessary removal in a manner not dangerous to the public health; and every person so affected who shall expose any other person thereto without his knowledge, shall be guilty of a misdemeanor. N.Y.P.C. §434; Minn. C. '05 §5008.



**§9101. Diseased Animals.** §288. Every owner or person having charge thereof, who shall import or drive into this state, or who shall turn out or suffer to run at large upon any highway or unenclosed lands, or upon any lands adjoining the enclosed lands kept by any person for pasture; or who shall keep or allow to be kept in any barn with other animals, or water or allow to be watered at any public drinking fountain or watering place, any animal having any contagious or infectious disease; or who shall sell, let or dispose of any such animal knowing it to be so diseased, without first apprising the purchaser or person taking it of the existence of such disease, shall be guilty of a misdemeanor. Minn. C. '05 §5009.

**§9102. Diseased Animals, Disposal of Carcasses.** §289. Every person owning or having in charge any animal that has died or been killed on account of disease, shall immediately bury the carcass thereof at least three feet underground, or cause the same to be consumed by fire. No person shall sell or offer to sell or give away the carcass of any animal which died or was killed on account of disease, or convey the same along any public road or land not his own. Every violation of any provision of this section shall be a misdemeanor. Minn. C. '05 §5011.

**§9103. Polluting Water Supply.** §290. Every person who shall deposit or suffer to be deposited in any spring, well, stream, river or lake, the water of which is or may be used for drinking purposes, or on any property owned, leased or otherwise controlled by any municipal corporation, corporation or person as a watershed or drainage basin for a public or private water system, any matter or thing whatever, dangerous or deleterious to health, or any matter or thing which may or could pollute the waters of such spring, well, stream, river, lake or water system, shall be guilty of a gross misdemeanor.

**§9104. Furnishing Impure Water.** §291. Every owner, agent, manager, operator or other person having charge of any waterworks furnishing water for public or private use, who shall knowingly permit any act or omit any duty or precaution by reason whereof the purity or healthfulness of the water supplied shall become impaired, shall be guilty of a gross misdemeanor.

**§9105. Practicing Medicine Without License.** §292. Every person who shall practice medicine or surgery or dentistry without having obtained and filed in the office of the county clerk where he resides, a license as required by law, shall be guilty of a gross misdemeanor.

Medicine and surgery, §3727; dentistry, §1931; veterinarians, §7123.

**§9106. Unlicensed Pilotage.** §293. Every person not duly licensed thereto, who shall pilot or offer to pilot any vessel into, within or out of the waters of Juan de Fuca Strait or Puget Sound, shall be guilty of a misdemeanor; Provided That nothing herein shall prohibit a master of a vessel acting as his own pilot, nor compel a master or owner of any vessel to take out a pilot license for that purpose. Pilotage, §4471.

## RAPE, ETC.

### CHAPTER 6.—Crimes Against Morality, Decency, Etc. Rape, Abduction, Carnal Abuse, Etc.

**§9107. Rape Defined.** §183. Rape is an act of sexual intercourse with a female not the wife of the perpetrator committed against her will and without her consent. Every person who shall perpetrate such an act of sexual intercourse with a female of the age of ten years or upwards not his wife:

1. When through, idiocy, imbecility or any unsoundness of mind, either temporary or permanent, she is incapable of giving consent; or
2. When her resistance is forcibly overcome; or
3. When her resistance is prevented by fear of immediate and great bodily harm which she has reasonable cause to believe will be inflicted upon her; or

4. When her resistance is prevented by stupor or weakness of mind produced by an intoxicating narcotic or anaesthetic agent administered by or with the privity of the defendant; or

5. When she is at the time unconscious of the nature of the act, and this is known to the defendant;

Shall be punished by imprisonment in the state penitentiary for not less than five years. N.Y.P.C. §278; Minn. C. '05 §4926.

Error in admitting evidence will reverse case though competent evidence overwhelming, *State v. Aldrich* 97 W. 593.

A number of men took prosecutrix to lonely spot, resistance presumed, *State v. Miller* 100 W. 586.

All methods may be charged if not repugnant, *State v. Meyerkamp* 82 W. 607.

Dismissal a bar under above section is a bar under following section, *State v. Dye* 81 W. 388.

Corroboration of force necessary when an element, *State v. Raymond*, 69 W. 98.

Unconsciousness as result of assault crime is defined by cl. 2—complaints, 39 Minn. 277, 39 N. W. 796.

Woman ceases resistance assault with attempt may be found probably not greater crime, 41 Minn. 285, 43 N. W. 5; assault with intent to commit.

Age of person committing crime is matter of defense, 35 Minn. 182, 28 N. W. 192.

Fixing time—evidence held sufficient, *State v. Biggs* 57 W. 514.

Time of how charged—variance in names—complaints by child—child as witness, *State v. Myrberg* 56 W. 384.

Assault with intent to commit is included offense—other acts, etc., inadmissible—when female denied rape confessions of defendant inadmissible, *State v. Marselle* 43 W. 273.

No proof but indirect evidence that defendant was not married to prosecutrix, held sufficient—corroboration by letters, etc., of defendant, *State v. May* 59 W. 414.

Admissions of taking liberties with prosecutrix, etc., held corroborative evidence under Laws '07 p 396, *State v. Jonas* 48 W. 133.

Intent question for jury—degree of force, *State v. Pillegge* 61 W. 264.

Complaints by prosecutrix do not corroborate—instruction erroneous, *State v. Stewart* 52 W. 61.

Prosecuting witness impeached but corroborated, conviction sustained, *State v. Katon* 47 W. 1.

By father on daughter sustained with slight corroboration, *State v. Conlin* 45 W. 478.

Evidence of other acts admissible—con-

duct of prosecutrix—corroboration' (1906) —sentence affected by consent, *State v. Mobley* 44 W. 549.

Instruction that conviction may be had on unsupported testimony of child is good, *State v. Patchen* 37 W. 24.

All the ways of committing the crime may be charged without duplicity, *State v. Adams* 41 W. 552.

Evidence that accused had solicited sexual intercourse with prosecutrix is inadmissible, *State v. Carpenter* 32 W. 254.

Amendatory act '97 is valid, *State v. Scott* 32 W. 279.

Charge of felonious assault and ravishing is not double, *State v. Priest* 32 W. 74.

Conversation with defendant regarding other similar crimes is not admissible, *State v. Thompson* 14 W. 285.

Conviction of father for rape of daughter sustained on evidence of daughter, flight of the father and his letter to his son asking him to have daughter not testify—corroboration not necessary, *State v. Roller* 30 W. 692.

Force is not necessary if female under 18 years old, id.

Evidence held to sustain conviction—impotency—competency of prosecutrix to testify—instructions, *State v. Bailey* 31 W. 89.

Act of '86 p 84 prescribing age of consent at 16 years was valid, *In re Moore* 81 Fed. Rep. 356.

If female of any age consents there can be no assault with intent to commit rape, *Whicher v. State* 2 W. 286; but see *State v. Hunter* 18 W. 670.

Information conforming to statute is sufficient, *State v. Phelps* 22 W. 181.

Mother of prosecutrix may testify to condition of child's clothing and her complaints, *State v. Hunter* 18 W. 670.

Surplus words indicating assault will be disregarded, *State v. Elwood* 15 W. 453.

Laws '86 p 84 held invalid 14 W. 306.

Intercourse with female under age of consent without violence is a crime—punishment of ten years for attempt, though injury slight, is warranted, *State v. Berzaman* 10 W. 277.

**§9108. Carnal Knowledge of Children—Penalty.** §184. Every male person who shall carnally know and abuse any female child under the age of eighteen years, not his wife, and every female person who shall have sexual intercourse with any male child under the age of eighteen years, not her husband, shall be punished as follows:

(1) When such child is under the age of ten years, by imprisonment in the state penitentiary for life;

(2) When such child is ten and under fifteen years of age, by imprisonment in the state penitentiary for not less than five years;

(3) When such child is fifteen and under eighteen years of age, by imprisonment in the state penitentiary for not more than ten years, or by imprisonment in the county jail for not more than one year. L. '19 ch 132; L. '09 890; R.&B. §2436; N. Y. P. C. §2787; Minn. C. '05 §4927.

Court properly denied defendant's motion for a commission to investigate pregnancy, *State v. Armstrong* 87 W. 275.

Evidence is admissible of the previous reputation of the prosecutrix as to un-

chastity, to affect her credibility as a witness, *State v. Workman*, 66 W. 292.

Previous act to the one charged do not render female unchaste, *State v. Sargent*, 62 W. 692.



Marriage of child abused with person 893, 83 N. W. 141.

charged disqualified her as a witness, 76 Minn. 526, 79 N. W. 518. Long continued intercourse with same man renders female unchaste, State v. Dacke 59 W. 238.

Statute not void for uncertainty—does not conflict with marriage laws, 80 Minn.

**§9109. Sexual Intercourse and Carnal Knowledge Defined. §185.** Any sexual penetration, however slight, is sufficient to complete sexual intercourse or carnal knowledge. Minn. C. '05 §4928.

Penetration, however slight, sufficient— to other person by child, State v. Gay 82 prior unchastity immaterial—complaints W. 423.

**§9110. Compelling Woman to Marry. §186.** Every person who, by force, menace, or duress, shall compel a woman against her will to marry him or to marry any other person, or to be defiled, shall be punished by imprisonment in the state penitentiary for not more than twenty years, or by a fine of not more than one thousand dollars, or by both. N.Y.P.C. §281; Minn. C. '05 §4929.

**§9111. Abduction Defined. §187.** Every person who—

1. Shall take a female under the age of eighteen years for the purpose of prostitution or sexual intercourse, or without the consent of her father, mother, guardian or other person having legal charge of her person, for the purpose of marriage; or,

2. Shall inveigle or entice an unmarried female of previously chaste character into a house of ill-fame or assignation, or elsewhere, for the purpose of prostitution; or,

3. Shall take or detain a woman unlawfully against her will, with intent, to compel her by force, menace or duress, to marry him or another person, or to be defiled; or,

4. Being the parent, guardian or other person having legal charge of the person of a female under the age of eighteen years, shall consent to her taking or detention by any person for the purpose of prostitution or sexual intercourse or for any obscene, indecent or immoral purpose;

Shall be guilty of abduction and punished by imprisonment in the state penitentiary for not more than ten years or by a fine of not more than one thousand dollars, or by both. N.Y.P.C. §282; Minn. C. '05 §4930.

Kidnaping, §8941.

Penetration sustained on evidence of manner of taking 38 Minn. 21, N. W. 712; repeated attempts and pain to child, State 47 Minn. 559, 50 N. W. 691.

v. Kincaid, 69 W. 273.

Place necessary under cl. 2 38 Minn.

Persuasion, etc., sufficient charge in attempt, State v. Richards, 88 W. 160. 154, 36 N. W. 102.

**§9112. Placing Female in House of Prostitution. §188.** Every person who—

1. Shall place a female in the charge or custody of another person for immoral purposes, or in a house of prostitution, with intent that she shall live a life of prostitution, or who shall compel any female to reside with him or with any other person for immoral purposes, or for the purposes of prostitution, or shall compel any such female to reside in a house of prostitution or to live a life of prostitution; or,

2. Shall ask or receive any compensation, gratuity or reward, or promise thereof, for or on account of placing in a house of prostitution or elsewhere any female for the purpose of causing her to cohabit with any male person or persons not her husband; or,

3. Shall give, offer, or promise any compensation, gratuity or reward, to procure any female for the purpose of placing her for immoral purposes in any house of prostitution, or elsewhere, against her will; or,

4. Being the husband of any woman, or the parent, guardian or other person having legal charge of the person of a female under the age of eighteen years, shall connive at, consent to, or permit her being or remaining in any house of prostitution or leading a life of prostitution; or,

5. Shall live with or accept any earnings of a common prostitute, or entice or solicit any person to go to a house of prostitution for any immoral purpose, or to have sexual intercourse with a common prostitute;

Shall be punished by imprisonment in the state penitentiary for not more than five years or by a fine of not more than two thousand dollars. N.Y.P.C. §282a-b.

"Every person" includes females—use made of earnings not material, State v. Kelly 102 W. 265.

Accepting specific sum is not living off earnings, State v. Lazzarro 100 W. 562.

Specific earnings need not be alleged—"wilfully and unlawfully" alleges intent—policeman permitted women to frequent cafe—thieves, etc., as witnesses—reputation of defendant—impeachment of witnesses, State v. Schuman 89 W. 9.

Charging crime in language of statute insufficient—duplicity, State v. Dodd, 84 W. 436.

No defense that female a prostitute—"place" defined, State v. Hanes 84 W. 601.

Accepting earnings good charge—two defendants—renting room and taking fee for each act is crime, State v. Columbus 74 W. 290.

Charge in language of statute good—prostitute by alias not fatal if defendant not misled—knowledge when money accepted from third party for jury, State v. Crane 88 W. 210.

Owner took fee for each act, held guilty of accepting earnings of a prostitute, State

v. Columbus 74 W. 290.

It is error, in an action for calling a defendant a "pimp," to refuse to instruct that the charge was justified if plaintiff lived with prostitutes, Eddy v. Cunningham, 69 W. 544.

Information held to charge knowledge of place where wife was placed, State v. Barker 43 W. 69.

Title of act L. '03 230, insufficient for offense of living with prostitute—living off the earnings, State v. Poole 42 W. 192.

Intercourse for gain not necessary to prostitute—letters of defendant showing other crimes inadmissible—must be continuing offense, State v. Thuna 59 W. 689.

Sex of defendant shown by appearance before jury—proof by admissions, State v. Risaburs 61 W. 162.

Title of act is sufficient; compilers headnotes not a part of title—act does not conflict with federal constitution, State ex rel. Zenner v. Graham 34 W. 81.

Scienter not necessary to constitute crime, State v. Zenner 35 W. 249.

Cited 228 Fed. 980.

**§9113. Seduction. §189.** Every person who shall seduce and have sexual intercourse with any female of previously chaste character, shall be punished by imprisonment in the state penitentiary for not more than five years or by imprisonment in the county jail for not more than one year or by a fine of not more than one thousand dollars, or by both fine and imprisonment: Provided, That if at any time before judgment upon an information or indictment, a defendant shall marry such female, the court shall order all further proceedings stayed; and if at any time within three years from the date of such marriage the defendant shall wrongfully fail to support or provide for or shall wrongfully desert or abandon such wife, said proceeding shall be revived and continued in the same manner as though no marriage had taken place, and in the trial of such cause, the wife shall be competent to testify and may testify, against her husband. N. Y. P. C. §284; Minn. C. '05 §4931

Evidence of prior acts admissible—prior acts with defendant, female not previously unchaste, State v. Tilden 79 W. 472.

Allowing cross-examination of defendants witnesses to the extent of their intercourse with other women is error, State v. Belknap 44 W. 605.

Civil action by female, §8266.

Any seductive promise is sufficient, State

v. O'Hare 36 W. 516.

Fondling girl of 12 years and telling it was not wrong to have intercourse is crime—exhibiting child to prejudice jury is error, State v. Carter 8 W. 272.

Promises necessary to constitute seduction, State v. Cochran 10 W. 562.

Information with surplusage sustained, State v. Rogan 18 W. 43.

**§9114. Indecent Assault. §190.** Every person who shall take any indecent liberties with, or on the person of any female of chaste character, without her consent, or with or on the person of any female under the age of eighteen years, of chaste character, with or without her consent, shall be guilty of a gross misdemeanor. Minn. C. '05 §4932.

Assault generally, §8758.

**§9115. Corroborating Evidence. §191.** No conviction shall be had for violation of any of the foregoing provisions of this chapter upon the testimony of the female upon or against whom the crime was committed, unless supported by other evidence. N. Y. P. C. §283, 286.

**§9115. Repealed L. '13 ch. 100.**

Corroborative evidence necessary, State v. Sefrit 82 W. 520.

Various facts and circumstances held corroboration—presumption of previous chaste character—subsequent unchastity, State v. Jones 80 W. 588.

Corroboration by another prostitute sustained, State v. Columbus 74 W. 290.

Corroboration of prosecutrix not neces-

sary, State v. Morden 87 W. 465.

Corroboration not necessary in civil case, Jensen v. Lawrence 94 W. 148.

Complaints of prosecutrix soon after rape held corroboration, State v. Holcomb, 73 W. 652.

Requires corroborating evidence from an independent source having a tendency to connect the accused with the crime, State v. Gibson, 64 W. 131.

Actual physical restraint is not neces-



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3. Shall take or detain a woman unlawfully against her will, with intent to compel her by force, menace or duress, to marry him or another person, or to be defiled; or,

4. Being the parent, guardian or other person having legal charge of the person of a female under the age of eighteen years, shall consent to her taking or detention by any person for the purpose of prostitution or sexual intercourse or for any obscene, indecent or immoral purpose;

Shall be guilty of abduction and punished by imprisonment in the state penitentiary for not more than ten years or by a fine of not more than one thousand dollars, or by both. N.Y.P.C. §282; Minn. C. '05 §4930.

Kidnaping, §8941.

Custody must be alleged under cl. 1—

Penetration sustained on evidence of manner of taking 38 Minn. 21, N. W. 712;  
 repeated attempts and pain to child, State 47 Minn. 559, 50 N. W. 691.  
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2. Shall ask or receive any compensation, gratuity or reward, or promise thereof, for or on account of placing in a house of prostitution or elsewhere any female for the purpose of causing her to cohabit with any male person or persons not her husband; or,

3. Shall give, offer, or promise any compensation, gratuity or reward, to procure any female for the purpose of placing her for immoral purposes in any house of prostitution, or elsewhere, against her will; or,

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No defense that female a prostitute—"place" defined, *State v. Hanes* 84 W. 601.

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Charge in language of statute good—prostitute by alias not fatal if defendant not misled—knowledge when money accepted from third party for jury, *State v. Crane* 88 W. 210.

Owner took fee for each act, held guilty of accepting earnings of a prostitute, *State*

*v. Columbus* 74 W. 290.

It is error, in an action for calling a defendant a "pimp," to refuse to instruct that the charge was justified if plaintiff lived with prostitutes, *Eddy v. Cunningham*, 69 W. 544.

Information held to charge knowledge of place where wife was placed, *State v. Barker* 43 W. 69.

Title of act L. '03 230, insufficient for offense of living with prostitute—living off the earnings, *State v. Poole* 42 W. 192.

Intercourse for gain not necessary to prostitute—letters of defendant showing other crimes inadmissible—must be continuing offense, *State v. Thuna* 59 W. 689.

Sex of defendant shown by appearance before jury—proof by admissions, *State v. Risaburs* 61 W. 162.

Title of act is sufficient; compliers headnotes not a part of title—act does not conflict with federal constitution, *State ex rel. Zenner v. Graham* 34 W. 81.

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Evidence of prior acts admissible—prior acts with defendant, female not previously unchaste, *State v. Tilden* 79 W. 472.

Allowing cross-examination of defendants witnesses to the extent of their intercourse with other women is error, *State v. Belknap*, 44 W. 605.

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Fondling girl of 12 years and telling it was not wrong to have intercourse is crime—exhibiting child to prejudice jury is error, *State v. Carter* 8 W. 272.

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Admission of guilt in presence of others is corroboration, *State v. Hess* 86 W. 240.

Corroborative evidence necessary, *State v. Sefrit* 82 W. 520.

Various facts and circumstances held corroboration—presumption of previous chaste character—subsequent unchastity, *State v. Jones* 80 W. 588.

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Corroboration of prosecutrix not neces-

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Corroboration not necessary in civil case, *Jensen v. Lawrence* 94 W. 148.

Complaints of prosecutrix soon after rape held corroboration, *State v. Holcomb*, 73 W. 652.

Requires corroborating evidence from an independent source having a tendency to connect the accused with the crime, *State v. Gibson*, 64 W. 131.

Actual physical restraint is not neces-



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Proof of the immoral character of the house to which prosecutrix was taken for prostitution is seemingly sufficient corroboration, State v. Stone, 66 W. 625.

Corroboration as to force necessary

where force is element of offense under §9107, State v. Raymond 69 W. 98.

Under L '07 396 being together under suspicious circumstances or pregnancy not corroborative, State v. McCool 53 W. 486.

Refusal to instruct according to statute, error, State v. Crouch 60 W. 450.

## ROBBERY.

§9116. **Robbery Defined.** §166. Robbery is the unlawful taking of personal property from the person of another, or in his presence, against his will, by means of force or violence or fear of injury, immediate or future, to his person or property, or the person or property of a member of his family, or of anyone in his company at the time of the robbery. Such force or fear must be used to obtain or retain possession of the property, or to prevent or overcome resistance to the taking; in either of which cases the degree of force is immaterial. If used merely as a means of escape, it does not constitute robbery. Such taking constitutes robbery whenever it appears that, although the taking was fully completed without the knowledge of the person from whom taken, such knowledge was prevented by the use of force or fear. Every person who shall commit robbery shall be punished by imprisonment in the state penitentiary for not less than five years. N.Y.P.C. §§224-33; Minn. C. '05 §4907.

Attempts at train robbery, §8971.

Value of property taken need not be alleged, State v. Rowan 84 W. 158.

Information need not set out physical acts done, State v. Baker, 69 W. 589.

Conviction sustained on the evidence, State v. Brache, 63 W. 396.

Language of former statute is not good charge of robbery from the person—action not a bar, State v. Hall 54 W. 142.

Impersonating officer and taking money from person, held robbery, State v. Parsons 44 W. 293.

Failure to allege ownership of property is fatal, State v. Morgan 31 W. 226.

Ownership of property must be alleged to be in person other than defendant, State v. Dengel 24 W. 49.

Larceny is included offense and court should so instruct if requested, *Id.*

## SUICIDE.

### CHAPTER 5.—Crimes Against The Person. Suicide.

§9117. **Suicide Defined.** §133. Suicide is the intentional taking of one's own life. N.Y.P.C. §172; Minn. C. '05 §4869.

§9118. **Attempting Suicide.** §134. Every person who, with intent to take his own life, shall commit upon himself any act dangerous to human life, or which, if committed upon or toward another person and followed by death as a consequence, would render the perpetrator chargeable with homicide, shall be punished by imprisonment in the state penitentiary for not more than two years, or by a fine of not more than one thousand dollars. N.Y.P.C. §174; Minn. C. '05 §4870.

§9119. **Aiding Suicide.** §135. Every person who, in any manner, shall wilfully advise, encourage, abet or assist another in taking his own life shall be guilty of manslaughter. N.Y.P.C. §175; Minn. C. '05 §4871.

§9120. **Abetting Attempt at Suicide.** §136. Every person who, in any manner, shall wilfully advise, encourage, abet or assist another person in attempting to take the latter's life shall be punished by imprisonment in the state penitentiary for not more than ten years. N.Y.P.C. §176; Minn. C. '05 §4872.

§9121. **Incapacity of Person No Defense.** §137. The fact that the person attempting to take his own life was incapable of committing crime shall not be a defense to a prosecution under either of sections 135 or 136 of this act. N.Y.P.C. §177; Minn. C. '05 §4873.

**SUNDAY.****Sabbath Breaking.**

**§9122. Sabbath Breaking Defined.** §242. Every person who, on the first day of the week, shall promote any noisy or boisterous sport or amusement, disturbing the peace of the day; or who shall conduct or carry on, or perform or employ any labor about any trade or manufacture, except livery stables, garages and works of necessity or charity conducted in an orderly manner

**SEXUAL DISEASES.**

**AN ACT** relating to crimes, prohibiting the advertising of the treatment and cure of sexual diseases, providing the penalty therefor and repealing sections [9022 and 9131-123 Pierce's Code] 2462 and 2710 of Remington & Ballinger's Annotated Codes and Statutes of Washington. L. '21 ch. 168.

**§9116-1. Advertising Cures—Penalty.** §1. Every person who shall advertise, either in his own name, or in the name of another person, co-partnership or pretended co-partnership, association, corporation or pretended corporation, in any newspaper, pamphlet, circular, periodical or in any other written or printed paper, and every owner, publisher, editor or manager of any newspaper, pamphlet, circular, periodical or other written or printed paper; who shall publish, or permit to be published or inserted, an advertisement in any newspaper, pamphlet, circular, periodical, or other written or printed paper, owned or controlled by him, or of which he is the editor or manager, and every person who shall distribute, circulate, display or cause to be distributed, circulated or displayed, any newspaper, pamphlet, circular, periodical, or other written or printed paper containing any advertisement for the treatment or cure of venereal diseases, the restoration of lost manhood, or of lost vitality or lost vigor, or monthly regulators for women, or the treatment of diseases of the sexual organs, or diseases caused by sexual vice, self-abuse or any disease of like cause, or the sale of any medicine, drug, compound, mixture, appliance, or any means whatever, whereby sexual diseases of men or women may be cured or relieved, shall be guilty of a gross misdemeanor.

**§9116-2. Evidence.** §2. Any advertisement in any newspaper, periodical, pamphlet, circular or other written or printed paper, containing the words, "lost manhood", "lost vitality", "lost vigor," "monthly regulators for women", or words synonymous therewith, shall be prima facie evidence of intent to violate this act by the person or persons so advertising, or causing to be advertised, or publishing or permitting to be published, or distributing, circulating and displaying or causing to be distributed, circulated or displayed, and such other advertisement.

**§9126. Preventing Religious Observance.** §246. Every person, who by threats or violence shall wilfully prevent another person from performing any lawful act enjoined upon or recommended to him by the religion which he professes, shall be guilty of a misdemeanor. N.Y.P.C. §273; Minn. C. 65 § 4984.

**§9127. Disturbing Religious Meeting.** §247. Every person who shall wilfully disturb, interrupt, or disquiet any assemblage of people met for religious worship—

1. By noisy, rude or indecent behavior, profane discourse, either within the place where such meeting is held, or so near it as to disturb the order and solemnity of the meeting; or,

2. By exhibiting shows or plays, or promoting any racing of animals, or



sary, moral persuasion being sufficient, State v. Stone, 66 W. 625.

Proof of the immoral character of the house to which prosecutrix was taken for prostitution is seemingly sufficient corroboration, State v. Stone, 66 W. 625.

Corroboration as to force necessary

where force is element of offense under §9107, State v. Raymond 69 W. 98.

Under L '07 396 being together under suspicious circumstances or pregnancy not corroborative, State v. McCool 53 W. 486.

Refusal to instruct according to statute, error, State v. Crouch 60 W. 450.

~~ROBBERY~~

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## SUNDAY.

## Sabbath Breaking.

**§9122. Sabbath Breaking Defined.** §242. Every person who, on the first day of the week, shall promote any noisy or boisterous sport or amusement, disturbing the peace of the day; or who shall conduct or carry on, or perform or employ any labor about any trade or manufacture, except livery stables, garages and works of necessity or charity conducted in an orderly manner so as not to interfere with the repose and religious liberty of the community; or who shall open any drinking saloon, or sell, offer or expose for sale, any personal property, shall be guilty of a misdemeanor: Provided, That meals, without intoxicating liquors, may be served on the premises or elsewhere by caterers, and prepared tobacco, milk, fruit, confectionery, newspapers, magazines, medical and surgical appliances may be sold in a quiet and orderly manner. In works of necessity or charity is included whatever is needful during the day for the good order or health or comfort of a community; but keeping open a barber shop, shaving or cutting hair shall not be deemed a work of necessity or charity, and nothing in this section shall be construed to permit the sale of uncooked meats, groceries, clothing, boots or shoes. N.Y.P.C. §§259-69; Minn. C. '05 §§4980-1.

Ordinance prohibiting theatres opening on Sunday not in conflict, *In re Ferguson* 80 W 102.

Houses may be opened for religious etc., purposes, *State v. Herald* 47 W. 538.

Section valid—repeal of former law—code 1881 as criminal code, *In re Donellan* 49 W 460.

Act is constitutional and does not amend existing law, *State v. Hergfeldt* 41 W. 234.

This section is not modified by the one following and saloon not to be kept open

though liquors are not sold.

Former law, barber shops, *State v. Krech* 10 W. 166; overruled *State v. Nichols* 28 W. 628.

This section is proper exercise of police power and is not deprivation of property nor life, liberty and property, *State v. Nichols* 28 W 628.

Does not make ordinary business transactions void—promissory note made on Sunday is valid, *Main v. Johnson* 7 W. 321.

**§9123. Obstructing View of Saloon.** §243. Every person being the owner or manager of or an employe in any drinking saloon who shall obstruct the view of the inside thereof from the outside by means of any screen, shade or other devices on any day shall be guilty of a misdemeanor.

**§9124. Observance of Other Day than Sabbath.** §244. It shall be a sufficient defense to a prosecution for performing work or labor on the first day of the week that the defendant uniformly keeps another day of the week as holy time and that the act complained of was done in such a manner as [will] not disturb others in the observance of the Sabbath. N.Y.P.C. §264; Minn. C. '05 §4982.

Does not permit the public sale of groceries on Sunday, 105 N. W. 1127.

**§9125. Service of Process on the Sabbath.** §245. Every person who shall serve any legal process on the Sabbath day, except in case of a breach, or apprehended breach, of the peace, or when sued out for the apprehension of a person charged with a crime, or where such service is expressly authorized by statute, shall be guilty of a misdemeanor. N.Y.P.C. §268; Minn. C. '05 §4983.

**§9126. Preventing Religious Observance.** §246. Every person, who by threats or violence shall wilfully prevent another person from performing any lawful act enjoined upon or recommended to him by the religion which he professes, shall be guilty of a misdemeanor. N.Y.P.C. §273; Minn. C. '05 §4984.

**§9127. Disturbing Religious Meeting.** §247. Every person who shall wilfully disturb, interrupt, or disquiet any assemblage of people met for religious worship—

1. By noisy, rude or indecent behavior, profane discourse, either within the place where such meeting is held, or so near it as to disturb the order and solemnity of the meeting; or,

2. By exhibiting shows or plays, or promoting any racing of animals, or



gaming of any description, or engaging in any boisterous or noisy amusement; or,

3. By disturbing in any manner, without authority of law within one mile thereof, free passage along a highway to the place of such meeting, or by maliciously cutting or otherwise injuring or disturbing a harness, conveyance, tent or other property belonging to any person in attendance upon such meeting;

Shall be guilty of a misdemeanor. N.Y.P.C. §§274-5: Minn. C. '05 §4985.

Disturbing any meeting, §9076.

Includes voluntary religious organiza-

Ordinance prohibiting theatres opening tions, State v. Stuth 11 W. 423.

on Sunday not in conflict, In re Ferguson 86 W. 102.

Charges need not be "wilfully," but words of same import may be used, id.

## SYNDICALISM.

**AN ACT relating to crimes, providing penalties for the dissemination of doctrines inimical to public tranquility and orderly government, and repealing chapter 3 of the Laws of 1919 [Emergency].** Approved March 19, 1919. L. '19 ch 174.

**§9127-1. Political Syndicalism Defined—Penalty.** §1. Whoever shall

(1) Advocate, advise, teach or justify crime, sedition, violence, intimidation or injury as a means or way of effecting or resisting any industrial, economic, social or political change, or

(2) Print, publish, edit, issue or knowingly sell, circulate, distribute or display any book, pamphlet, paper, hand-bill, document, or written or printed matter of any form, advocating, advising, teaching or justifying crime, sedition, violence, intimidation or injury as a means or way of effecting or resisting any industrial, economic, social or political change, or

(3) Organize or help to organize, give aid to, be a member of or voluntarily assemble with any group of persons formed to advocate, advise or teach crime, sedition, violence, intimidation or injury as a means or way of effecting or resisting any industrial, economic, social or political change,

Shall be guilty of a felony.

**§9127-2. Permitting Use of Premises—Penalty.** §2. Any owner, lessee, agent, occupant or person in control of any property who shall knowingly permit the use thereof by any person or persons engaged in doing any of the acts or things made unlawful by the preceding section, shall be guilty of a gross misdemeanor.

**AN ACT to protect certain industrial enterprises wherein persons are employed for wage, and to prevent interference with the management or control thereof, and to prohibit the dissemination of doctrines inimical to industry, and prescribing penalties.** [Emergency.] Approved March 19, 1919. L. '19 ch. 173.

**§9127-3. Industrial Syndicalism Defined—Penalty.** §1. Whoever, with intent that his act shall, or with reason to believe that it may, injure, interfere with, or obstruct any agricultural, stock-raising, lumbering, mining, quarrying, fishing, manufacturing, transportation, mercantile or building enterprise wherein persons are employed for wage, shall wilfully injure or destroy, or attempt or threaten to injure or destroy, any property whatsoever, or shall wilfully derange, or attempt or threaten to derange, any mechanism or appliance, shall be guilty of a felony.

**§9127-4. Supplanting Owner—Penalty.** §2. Whoever, with intent to supplant, nullify or impair the owner's management or control of any enterprise described in the preceding section, shall unlawfully take or retain, or attempt or threaten unlawfully to take or retain, possession or control of any property or instrumentality used in such enterprise, shall be guilty of a felony.

**§9127-5. Advocacy of—Assemblage—Penalty.** §3. Whoever shall

(1) Advocate, advise or teach the necessity, duty, propriety or expediency of doing or practicing any of the acts made unlawful by the two preceding sections, or

(2) Print, publish, edit, issue or knowingly sell, circulate, distribute or dis-

play any book, pamphlet, paper, hand-bill, document or written or printed matter of any form, advocating, advising or teaching such necessity, duty, propriety or expediency, or

(3) By word of mouth or writing justify any act or conduct with intent to advocate, advise or teach such necessity, duty, propriety or expediency, or

(4) Organize or help to organize, give aid to, be a member of or voluntarily assemble with, any group of persons formed to advocate, advise or teach such necessity, duty, propriety or expediency,

Shall be guilty of a felony.

§9127-6. **Criminal Laws Saved.** §4. This act shall not be construed to repeal or amend any existing penal statute.

## TREASON.

### CHAPTER 3.—Crimes Against the Sovereignty of the State. Treason.

§9128. **Treason Defined—Penalty.** §65. Treason against the people of the state consists in—

1. Levying war against the people of the state, or
2. Adhering to its enemies, or
3. Giving them aid and comfort.

Treason is punishable by death.

No person shall be convicted for treason unless upon the testimony of two witnesses to the same overt act or by confession in open court. N.Y.P.C. §§37-8; Minn. C.'05 §4793.

Constitution defines treason, art. 1, §27.

§9129. **Levying War.** §66. To constitute levying war against the state an actual act of war must be committed. To conspire to levy war is not enough. When persons arise in insurrection with intent to prevent, in general, by force and intimidation, the execution of a statute of this state, or to force its repeal, they shall be guilty of levying war. But an endeavor, although by numbers and force of arms, to resist the execution of a law in a single instance, and for a private purpose, is not levying war. N.Y.P.C. §40; Minn. C.'05 §4795.

§9130. **Misprision of Treason.** §67. Every person having knowledge of the commission of treason, who conceals the same, and does not, as soon as may be, disclose such treason to the governor or a judge of the supreme court or a superior court, shall be guilty of misprision of treason and punished by a fine of not more than one thousand dollars, or by imprisonment in the state penitentiary for not more than five years or in a county jail for not more than one year. Minn. C.'05 §4794.

## VAGRANCY.

§9131. **Vagrancy Defined.** §436. Every—

1. Person who asks or receives any compensation, gratuity or reward for practicing fortune telling, palmistry or clairvoyance; or,
2. Person who keeps a place where lost or stolen property is concealed; or,
3. Person practicing or soliciting prostitution or keeping a house of prostitution; or,
4. Common drunkards found in any place where intoxicating liquors are sold or kept for sale, or in an intoxicated condition; or,
5. Common gambler found in any place where gambling is conducted or where gambling paraphernalia or devices are kept; or,
6. Healthy person who solicits alms; or,
7. Lewd disorderly or dissolute person; or,
8. Person who wanders about the streets at late or unusual hours of the night without any visible or lawful business; or,
9. Person who lodges in any barn, shed, shop, outhouse, vessel, car,



saloon or other place not kept for lodging purposes, without the permission of the owner or person entitled to the possession thereof; or,

10. Person who lives or works in a house of prostitution or solicits for any prostitute or house of prostitution; or,

11. Person who solicits business for an attorney around any court, jail, morgue or hospital; or elsewhere or,

12. Habitual user of opium, morphine, alkaloid-cocaine or alpha or beta eucaine, or any derivation mixture or preparation of any of them; or,

13. Person having no visible means of support, who does not seek employment, nor work when employment is offered to him; or,

14. Person who by his own confession thereto or prior conviction thereof is known to have been guilty of larceny, burglary, robbery or any crime of which fraud or an intent to defraud is an element, who shall be found in any drinking saloon or cellar, or any public dance hall or music hall where intoxicating liquors are sold, or be found intoxicated, or who, except upon lawful business, shall go about any dark street or alley or any residence section of any city or town in the night-time, or loiter about any steamboat landing, passenger depot, banking institution or crowded street, shop or thoroughfare, or any public meeting or gathering, or place where people gather in crowds—

Is a vagrant, and shall be punished by imprisonment in the county jail for not more than six months, or by a fine of not more than five hundred dollars.

Justice's jurisdiction §9131-121.

Is constitutional and extends to fortune telling, though the principles of astrology be followed, *State v. Neitzel*, 69 W. 567.

## PRIOR LAWS NOT REPEALED.

**AN ACT** relative to crimes and punishments and proceedings in criminal cases. Approved December 1, 1881. C81 §764-1296.

**FORMER LAWS:—GENERAL ACTS, CRIMES**, '54 p 75; **PROCEDURE**, '54 p 100; amd '54-5 pp 11, 34, '56-7 p 4, '57-8 p 8; gambling '54-5 p 23, amd '56-7 p 25; sale of liquor to Indians '54-5 p 30; ballast in Shoalwater Bay '55-6 p 12; enlarging jurisdiction of probate and justices' courts in criminal cases '56-7 p 13; horse stealing '56-7 p 27; defacing public property '57-8 p 29.

**GENERAL ACT** '59-60 p 103; deserting sailors on Puget Sound '59-60 p 323; to protect bridges '59-60 p 331; enticing seamen to desert '59-60 p 300; houses of ill-fame '59-60 p 296; gambling '59-60 p 321; injury to water viaduct '61-2 p 30; counterfeiting gold dust '61-2 p 15.

**GENERAL ACT** '62-3 p 279, amd '64-5 p 19, '65-6 p 102, '66-7 pp 95-6, '71 p 109;

enticing seamen to desert '62-3 p 448; houses of ill-fame '62-3 p 449; Sunday observance '65-6 p 86, amd '66-7 p 139; secrecy of telegraph messages '65-6 p 69; forfeiture of recognizances '66-7 p 102; prairie fires in certain counties '67-8 p 41.

**GENERAL ACT** '69 p 198; libel '69 p 383; accused as witness '71 p 105.

**GENERAL ACT** '73 p 180, amd '75 p 36 p 41 p 42, '77 p 198 p 204; nuisance '75 p 79, amd '77 p 305; discharging ballast '73 p 484; horse racing on highway '75 p 125; expense of extradition '75 p 115; vagrancy '75 p 89; indiscriminate use of poisons '75 p 105; protection of buoys and beacons '75 p 119; Governor's reward for obstructing railroad track '77 p 283; forest fires '77 p 300; libel '79 p 144; gambling '79 p 97.

See various subjects.

## BANKS.

**AN ACT** punishing bank officers for receiving deposits knowing the bank to be insolvent. Approved March 10, 1893. Laws '93 p 271.

**§9131-1. Bank Officer Receiving Deposits in Insolvent Bank.** §1. Any president, director, manager, cashier or other officer of any banking institution, who shall receive or assent to the reception of deposits after he shall have knowledge of the fact that such banking institution is insolvent or in failing circumstances, shall be guilty of felony, and punished as hereinafter provided.

Law valid though constitution creates double liability, *State v. Olson* 35 W. 149.

**§9131-2. — Penalty.** §2. Any person violating the provisions of Sec. 1, of this act, upon conviction thereof shall be punished by imprisonment in the penitentiary for a period of not less than two, nor more than twenty, years.

**BEVERAGE RECEPTACLES.**

**Supplementary—AN ACT** to protect manufacturers, bottlers and dealers in ale, porters, lager beer, soda, mineral waters, and other beverages, from the loss of their casks, barrels, kegs, bottles and boxes. Approved March 6, 1897. Laws '97 p 50.

**§9131-3. Filing of Marks for Beverage Receptacles. §1.** That all persons engaged in the manufacture, bottling or selling of ale, porter, lager beer, soda, mineral water, or other beverages in casks, kegs, bottles or boxes, with their names, or other marks of ownership stamped or marked thereon, may file in the office of secretary of the state and also in the office of the auditor of the county in which such articles are manufactured, bottled or sold, a description of names or marks so used by them, and cause the same to be printed for six successive weeks in a weekly newspaper, printed in the English language in counties where no daily newspaper is printed or published; and in counties where a daily newspaper is printed and published, the same shall be published in a daily newspaper of general circulation, printed in the English language six times a week for six successive weeks, in counties where such articles are manufactured, bottled or sold.

Larceny generally, §8944.

**§9131-4. Conversion or Use of Receptacles—Penalty. §2.** It is hereby declared to be unlawful for any person or persons hereafter, without the written consent of the owner or owners thereof, to fill with ale, porter, lager beer or soda, mineral water or other beverages, for sale or to be furnished to customers, any such casks, barrels, kegs, bottles, or boxes so marked or stamped, or to sell, dispose of, buy or traffic in, or wantonly destroy any such cask, barrel, keg, bottle or box so marked, stamped, by the owner or owners thereof, after such owner or owners shall have complied with the provisions of the first section of this act. Any person or persons who shall violate any of the provisions of this act shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be fined five dollars for each and every cask, barrel, keg, or box, and fifty cents for each and every bottle so by him, her or them filled, bought, sold, used, trafficked in or wantonly destroyed, together with costs of suit for first offense, and ten dollars for each and every cask, barrel, keg and box, and one dollar for each and every bottle so filled, bought, sold, used, trafficked in, or wantonly destroyed, together with the costs of suit for each subsequent offense.

**§9131-5. Use or Possession Prima Facie Evidence. §3.** The using by any person other than the rightful owner thereof without such written permission, of any such cask, barrel, keg, bottle or box, for the sale therein of ale, porter, lager beer, soda, mineral waters or other beverages, or to be furnished to customers, or the buying, selling or trafficking in any such barrel, keg, bottle or box, by any person other than the owner, without such written permission, or the fact that any junk dealer or dealers in casks, barrels, kegs, bottles, or boxes, shall have in his or her possession any such cask, barrel, keg, bottle or box so marked or stamped and registered as aforesaid, without such written permission, shall, and is hereby declared to be prima facie evidence that such use, buying, selling, trafficking in or possession is unlawful within the meaning of this act.

**BIGAMY.**

**§9131-6. Rule of Proof. §5.** A recorded certificate of marriage, or a certified copy thereof, there being no decree of divorce, proves the marriage of a person for the purpose of this act. L. '95 372.

**§9131-7. Absence Is Presumption of Death. §946.—183.** The provisions of the preceding section do not extend to any person whose husband or wife has continually remained beyond seas, or who has voluntarily withdrawn



from the other and remained absent for the space of five years together, the party marrying again not knowing the other to be living within that time; nor to any person who has good reason to believe such husband or wife to be dead; nor to any person who has been legally divorced, from the bonds of matrimony.

### BRIDGES.

**§9131-8. Driving Fast Over Bridges.** §931.—168. That any person or persons, riding or driving faster than a walk, over any bridge located on any county or state road, composed of one or more spans, upon conviction thereof, shall be fined in any sum not to exceed ten dollars nor less than five dollars to be collected by any court having competent jurisdiction thereof; and all moneys, so collected, shall be paid into the county treasury and become a part of the school fund. Provided, That this section shall apply only to bridges over thirty feet in length.

### CHARCOAL.

**§9131-9. Charcoal Measure.** §1286.—525. All baskets for measuring charcoal, in this state shall contain two bushels and shall be of the following dimensions, viz: Nineteen (19) inches in breadth in every part thereof, and seventeen and one-half inches (17½) deep, measuring from the top of the basket to the highest part of the bottom and be well heaped; Provided, That nothing in this act shall be construed so as to prevent the use of any basket, box or other measure in conformity with the standard of measurements as provided in this section.

**§9131-10. — Penalty.** §1287.—526. Any person or persons who shall violate the provisions of the preceding section shall be liable to a fine of five dollars for each and every offense so committed to be collected in similar manner as other fines for similar cases are now collected and all fines collected as aforesaid shall belong to the school fund of the county in which such offense or offenses may have been committed.

### COUNTERFEITING.

**§9131-11. Counterfeiting Gold Dust.** §857.—94. Any person who shall counterfeit any kind or species of gold dust, gold bullion or bars, lumps, pieces or nuggets of gold, or any description whatsoever of uncoined gold, currently passing in this state, or shall alter or put off any kind of uncoined gold, mentioned in this section, for the purpose of defrauding any person, or persons, body politic or corporate, or shall make any instrument for counterfeiting, any kind of uncoined gold as aforesaid, knowing the purpose for which such instrument was made, or shall knowingly have in his possession, and secretly keep any instrument for the purpose of counterfeiting any kind of uncoined gold as aforesaid; every such person so offending, or any person or persons aiding or abetting in or about said offense or offenses, shall be deemed guilty of counterfeiting, and upon conviction thereof shall be punished by imprisonment in the penitentiary for a term not less than one year nor more than fourteen years.

Counterfeiting generally, §8787.

### CRUELTY TO ANIMALS.

Supplementary—AN ACT for the prevention of cruelty to children, animals, fowls and birds and providing punishment therefor. Approved February 23, 1893. Laws '93 p 40.

**§9131-12. Cruelty to Animals.** §2. Whosoever shall overdrive, overload or drive when overloaded, overwork, cruelly beat, mutilate, torture, torment or deprive of necessary sustenance, cruelly abandon or neglect, or cause the same to be done, any animal, or being the owner or custodian thereof shall inflict unnecessary cruelty, or fails to provide it with proper food, drink, or who cruelly works such animals when unfit for labor, carries it or causes

it to be carried in or upon a vehicle, or otherwise, in an unnecessarily cruel or inhuman manner, shall be punished by fine not exceeding one hundred dollars, or by imprisonment in the county jail not exceeding three months.

Later act §1957.

Compare later section, §1960.

**§9131-13. Corporations Liable.** §3. A corporation violating any of the provisions of either of the two preceding sections shall be punished by fine, as therein provided; and corporations in regard to animals transported, owned or used by them, or in their custody, shall be responsible for the knowledge and the acts of their agents and servants.

**§9131-14. Railroad Companies' Methods.** §4. Railroad companies in carrying or transporting animals shall not permit them to be confined in cars for a longer period than forty-eight consecutive hours without unloading them for rest, water and feeding for a period of at least two consecutive hours, unless prevented from so unloading them by unavoidable accident. In estimating such confinement the time during which the animals have been confined without such rest on connecting roads from which they are received shall be included. Animals so unloaded shall during such rest, be properly fed, watered by the owner or person having the custody of them, or in case of his default in so doing, then by the railroad company transporting them, at the expense of said owner or person in custody thereof, and said company shall in such case have a lien upon such animals for food, care and custody furnished and shall not be liable for such detention of such animals. If animals are transported where they can and do have proper food, water, space and opportunity for rest, the foregoing provision in regard to their being unloaded shall not apply. Violators of this section shall be punished by fine not exceeding one hundred dollars.

Compare later section, §1961.

**§9131-15. Forfeiture of Animals—Sale by Auction.** §7. After such seizure of said fowls, birds, dogs or other animals as provided for in section five of this act, application shall be made to a trial justice, or municipal court, for an order of forfeiture of the same, and if upon the hearing of the same, such notice having been given of the hearing as the court shall order, it shall be found that such fowls, birds, dogs or other animals, or any of them, at the time of such seizure, were engaged in fighting at an exhibition thereof, or were owned, kept, possessed or trained by any person with intent that they should be so engaged, all such fowls, birds, dogs or other animals, shall be adjudged forfeit, and such justice or court shall thereupon issue an order for selling the same at auction to the highest bidder, within twenty-four hours, the proceeds to be paid into the common school fund of the county where such seizure is made. Any fowls, birds, dogs or other animals seized as hereinbefore provided which are not adjudged forfeit, shall be delivered to the owner or the person entitled to the possession thereof. The necessary costs in the aforesaid proceedings shall be allowed and paid as costs in criminal prosecutions are paid.

Misdemeanor to kill sea gulls, §9131-98; honey bees, §145.

**§9131-16. Cruelty to Birds.** §8. Whosoever shall wantonly or cruelly pluck, maim, torture, deprive of necessary food or drink, or wantonly kill any fowl or insectivorous bird, shall be deemed guilty of a misdemeanor, and on conviction thereof shall be fined in any sum not exceeding twenty dollars.

**§9131-17. Duties of Peace Officers.** §9. Any judge, justice of the peace, police judge, sheriff, constable or police officer may arrest any person found committing any of the cruelties hereinbefore enumerated, without a warrant for such arrest, and any officer or member of any humane society, or society for the prevention of cruelty to animals, may cause the immediate arrest of any person engaged in, or who shall have committed such cruelties, upon making oral complaint to any sheriff, constable or police officer, or such officer or member of such society may himself arrest any person found per-



petrating any of the cruelties herein enumerated: Provided, That said person making such oral complaint or making such arrest shall file with a proper officer a written complaint, stating the act or acts complained of, within twenty-four hours, excluding Sundays and legal holidays, after such arrest shall have been made.

**§9131-18. Disposition of Fines.** §10. All fines herein provided for shall be paid into the common school fund of the county in which such fine shall be imposed.

## ELECTIONS.

**§9131-19. Fraud on Voter.** §902.—139. If any person shall fraudulently cause, or attempt to cause any elector at any election pursuant to law in this state, to vote for a person different from the one he intended to vote for, such person so offending shall be fined not more than one hundred nor less than ten dollars.

Election crimes, duplicated sections  
§2190.

**§9131-20. Double Voting.** §903. If any person shall vote, or attempt to vote more than once at any election, or shall knowingly hand in two or more tickets together, or, having voted in one township, precinct, ward, or county shall afterward, on the same day, vote, or attempt to vote, in another township, precinct, ward, or county, such person shall be guilty of a gross misdemeanor and shall be incapable of voting at any election or holding any office for two years thereafter. L. '11 394.

**§9131-21. Election Officer Influencing Voter.** §904. If any inspector, judge, or clerk of an election shall attempt to induce, by persuasion, menace, or reward, or promise thereof, any elector to vote for any person, such inspector, judge, or clerk shall be guilty of a gross misdemeanor. L. '11 394.

**§9131-22. Voter Not Qualified.** §905. If any person, knowing that he does not possess the legal qualifications of a voter, at any election authorized by law to be held in this state for any office whatever, shall vote at such election, such person shall be guilty of a felony. L. '11 394.

**§9131-23. Officer Tampering With Ballot.** §906. If any judge, inspector, clerk, or any other officer of an election shall open or mark, by folding or otherwise, any ticket presented by such elector at such election, or attempt to find out the names thereon, or suffer the same to be done by any other person, before such ticket is deposited in the ballot box, such judge, inspector, or clerk shall be guilty of a gross misdemeanor. L. '11 394.

**§9131-24. Sale of Liquor on Election Day.** §§907-8. Any person who shall barter, sell, give away, or in any manner dispose of any intoxicating liquors, on the day of any general or special election of state, county, or municipal officers within the state, district, county, or corporation in which said election is held, and before the polls have closed, shall, upon conviction thereof, be punished by a fine of not less than twenty-five dollars nor more than two hundred dollars, or by imprisonment in the county jail not less than ten nor more than thirty days, or both, in the discretion of the court. L. '91 119.

**§9131-25. Intimidating or Treating Voter.** §909. If any person shall use menace, force, threat or corrupt means at or previous to any election held pursuant to the laws of the state towards any elector to hinder or deter such elector from voting at said election, or shall directly or indirectly offer any bribe or reward of any kind to induce any elector to vote for or against any person, or proposition, or shall authorize any person so to do, such person shall be guilty of a felony. L. '11 394.

**§9131-26. Inducing Indian to Vote.** §910.—147. If any person shall induce or attempt to induce any Indian to vote or offer his vote, at any such election, such person so offending, upon conviction thereof, shall be fined in any sum not exceeding five hundred dollars, to which may be added imprisonment, in the county jail not to exceed three months, Provided,

That this section shall not be so construed as to include Indians, who are citizens and entitled to vote under the amendments to the constitution of the United States and the laws of congress.

**§9131-27. Election Officers Allowing Double Voting.** §911. If any inspector or judge of any such election shall knowingly permit any elector to cast a second vote at any such election, or shall knowingly permit any person not a qualified elector to vote at any such election, such inspector or judge of election shall be guilty of a felony and be incapable of holding any office in this state for five years thereafter. L. '11 394.

**§9131-28. All Duties Enjoined or Prohibited.** §912. Every person charged with the performance of any duty under the provisions of any law of this state relating to elections, or to any September primary or any other primary election held pursuant to law or the provisions of any charter or ordinance of any town or city of this state, who wilfully neglects or refuses to perform such duty, or who, in the performance of such duty, or in his official capacity, knowingly or fraudulently violates any of the provisions of law relating to such duty, shall be guilty of a felony. L. '11 394.

Section is general in application—applies to primary, *State v. Robinson* 69 W. 172.

### ELECTRIC APPLIANCES.

**Supplementary—AN ACT** making it unlawful to injure, obstruct or destroy any line erected or constructed for the transmission of electrical current, or appurtenances or appliances connected therewith; or to remove, injure or destroy any house, shop, building or other structure or machinery connected therewith; or to set any fire that shall result in such injury or destruction; or to prevent the removal of any obstruction to such lines, and prescribing the punishment therefor. Approved March 13, 1899. Laws '99 p 180.

**§9131-29. Tampering With Electric Appliances.** §1. It shall be unlawful for anyone within the State of Washington to wilfully or maliciously, and without the consent of the owner, take down, remove, injure, obstruct, displace or destroy any line erected or constructed for the transmission of electrical current, or any poles, wires, conduits, cables, insulators, or any support upon which wires or cables may be suspended, or any part of any such line or appurtenances or apparatus connected therewith, or to sever any wire or cable thereof or in any manner to interrupt the transmission of electrical current over and along any such line; or to take down, remove, injure, or destroy any house, shop, building or other structure or machinery connected with or necessary to the use of any line erected, or constructed for the transmission of electrical current.

Later act §8977.

**§9131-30. — By Setting Fire.** §2. It shall be unlawful for any person within the State of Washington to wilfully or maliciously set any fire that shall result in the destruction, or injury of any line erected or constructed for the transmission of electrical current or any poles, conduits, wires, cables, insulators or any support upon which wires or cables may be suspended, or any part of any such line, or appurtenances or apparatus connected therewith, or any house, shop, building or other structure or machinery connected with or necessary to the use of any line erected or constructed for the transmission of electrical current, or to set any fire that shall in any manner interrupt the transmission of electrical current over and along any such line.

Arson generally, §8752.

**§9131-31. — Penalty.** §3. Any person or persons violating any of the provisions of sections one and two of this act shall, upon conviction thereof, be punished by a fine not exceeding five hundred dollars, or imprisonment in the county jail not exceeding one year, or by imprisonment in the penitentiary not exceeding ten years, or by both such fine and imprisonment in the discretion of the court.



## ESTRAYS.

Supplementary—AN ACT for the protection of stockraisers. Approved November 29, 1881. C81 §2537.

**§9131-32. Owners Hunting for Estrays to Corral Other Stock. §2537.—1.** It shall be the duty of any and all persons searching or hunting for stray horses, mules or cattle, to drive the band or herd in which they may find their stray horses, mules or cattle, into the nearest corral, before separating their said stray animals from the balance of the herd or band; that in order to separate their said stray animals from the herd or band, the person or persons owning said stray shall drive them out of and away from the corral in which they may be driven before setting the herd or band at large. Any person violating this section shall be deemed guilty of a misdemeanor, and on conviction thereof, before a justice of the peace, shall be fined in any sum not exceeding one hundred dollars, and half the costs of prosecution; said fine so recovered to be paid into the school fund of the county in which the offense was committed; and in addition thereto shall be imprisoned until the fine and costs are paid.

Supplementary—AN ACT to prevent the driving of stock from their range, and providing penalty for the violation of the same. Approved February 19, 1891. Laws '91 p 26.

**§9131-33. Stock on Range Removed Only by Owner. §1.** That no person shall be permitted to lead, drive, or in any manner remove, any horse, mare, colt, jack, jenny, mule, or any head of neat cattle, or hog, sheep, goat, or any number of these animals, the same being the property of another person, from the range on which they are permitted to run in common, without the consent of the owner thereof first had and obtained: Provided, The owner of any such animals, as aforesaid, finding the same running on the herd grounds or on common range, with other animals of the same, may be permitted to drive his own animal or animals, together with such other animals as he cannot conveniently separate from his own, to the nearest and most convenient corral, or other place for separating his own from other animals, if he, in such case, immediately with all convenient speed, drive all such animals, not belonging to himself back to the herd ground or range from which he brought such animals.

**§9131-34. — Penalty. §2.** Any person violating the provisions of the foregoing section, shall be guilty of a misdemeanor, and, on conviction thereof, shall be punishable by a fine of not less than twenty nor exceeding five hundred dollars, or imprisonment not exceeding six months, nor less than thirty days, or both such fine and imprisonment, discretionary with the court, having jurisdiction of the same.

**§9131-35. Conversion of Estray. §916.—153.** If the taker up of estray property shall convert the same to his own use, before the title thereto shall vest in him according to law, or if he shall knowingly and willfully violate any of the provisions of the law regulating the taking up of estrays, such person, so offending, shall be fined in any sum not exceeding five hundred dollars, and not less than double the value of such estray property.

The repeal of this section by Laws '01 p. 264 §6 was evidently an inadvertence. Ownership may be alleged to be in the state, §9292.

## EXTORTION.

**§9131-36. Extortion of Ferry Fees. §923.—160.** If any ferryman, ferry owner, ferry keeper, or keeper of a toll bridge or toll gate, himself, or by any person in his employment, shall demand or receive any greater fees on account of ferriage or toll, than is, or may be fixed by law, or by the proper board doing county business, as the rates of ferriage or toll to be received by such person, upon conviction thereof, he shall be fined in any sum not exceeding one hundred dollars, or be imprisoned in the county jail not exceeding one month.

## FIRES.

## TO PREVENT THE DESTRUCTION OF TIMBER BY FIRE.

Supplementary—AN ACT to prevent the destruction of forests by fire on public lands. Approved March 7, 1891. Laws '91 p 226.

Former provisions C81 §1224.

§9131-37. **Forest Fires on United States or State Lands.** §1. Any person or persons who shall wilfully and deliberately set fire to any wooded county or forest belonging to this state or the United States within this state, or to any place from which fire shall be communicated to any such wooded county or forest, or who shall accidentally set fire to any such wooded county or forest or to any place from which fire shall be communicated to any such wooded county or forest, and shall not extinguish the same, or use every effort to that end, or who shall build any fire, for lawful purposes, or otherwise, in or near any such wooded county or forest and through carelessness or neglect shall permit said fire to extend to and burn through such wooded county or forest; shall be deemed guilty of a misdemeanor, and on conviction before a court of competent jurisdiction, shall be punishable by fine not exceeding one thousand dollars, or imprisonment not exceeding one year, or by both such fine and imprisonment: Provided, That nothing herein contained shall apply to any person who in good faith shall set a back fire to prevent the extension of a fire already burning. All fines collected under this act shall be paid into the county treasury for the benefit of the common school fund of the county in which they are collected.

Later laws, §8840.

Arson, §8752.

§9131-38. **Fires on Another's Property.** §1224. If any person shall, without malice, kindle a fire in any field, pasture, inclosure, forest, prairie, or timber land, not his own, without the consent of the owner, and the same shall spread and do damage to any buildings, fences, crops, cordwood, bark, or other personal property, not his own, or to any wood or timber land, not his own, he shall, on conviction, be punished by a fine of not less than ten nor more than five hundred dollars, and costs, according to the aggravation of the offense, and shall stand committed till the fine and costs are paid.

§9131-39. **Setting Fire to Personal Property.** §824.—61. Every person who shall wilfully and maliciously set fire to any pile or parcel of boards, timber, piles, or other lumber, cord wood, ricks stacks, or shocks of grain, hay or other vegetable products, or vegetable products severed from the soil not in ricks, stacks or shocks, or any standing grass or grain, or other cultivated vegetable product of the soil, shall, upon conviction thereof, be imprisoned in the county jail not more than one year nor less than one month, and be fined in any sum not exceeding five hundred dollars.

§9131-40. **Malicious Fires on One's Own Land Communicated.** §1225. If any person shall maliciously, with intent to injure any other person, by himself or any other person, kindle a fire on his own land, or the land of another person, and by means of such fire the buildings, fences, crops, or other personal property or wooded timber lands of any other person shall be destroyed or injured, he shall, on conviction, be punished by a fine not less than twenty dollars nor more than one thousand dollars, or by imprisonment in the county jail not less than three months nor more than twelve months, according to the aggravation of the offense. L. '91 119.

§9131-41. **Negligent Fires on One's Own Land Communicated.** §1226.—465. If any person shall for any lawful purpose kindle a fire upon his own land, he shall do it at such time and in such manner and shall take such care of it, to prevent it from spreading and doing damage to other persons property as a prudent and careful man would do, and if he fail so to do he shall be liable in an action on the case, to any person suffering damage thereby to the full amount of such damage.

Liability established under the facts,  
Kuehn v. Dix 42 W. 532.

Declares policy of state regarding fires,  
Jordan v. Welch 61 W. 569.



**§9131-42. Hunter's Fires With and Without Malice §1227.** Any person who shall enter upon the lands of another person for the purposes of hunting or fishing, and shall, by the use of firearms, or other means, kindle any fire thereon, shall be punished by a fine not less than ten nor more than five hundred dollars, if such fire be kindled without malice; and if such fire be kindled maliciously, and with intent to injure any other person, such offender shall be punished by a fine not less than twenty nor more than one thousand dollars, or by imprisonment in the county jail not less than three months nor more than twelve months. L. '91 119.

**§9131-43. Loggers May Kindle Fires. §1228.—467.** Persons engaged in driving lumber upon any waters or streams of this state may kindle fires when necessary for the purpose in which they are engaged, but shall be bound to use the utmost caution to prevent the same from spreading and doing damage; and if they fail so to do, they shall be subject to all liabilities and penalties of this act, in the same manner as if the privilege granted by this action [section] had not been allowed.

**§9131-44. Civil Action Saved. §1229.—468.** The common law right to an action for damages done by fires is not taken away or diminished by this act, but it may be pursued, notwithstanding the fines or penalties set forth in §1224 [§9131-38] and §1225 [§9131-40] of this act; but any person availing himself of the provisions of §1226 [§9131-41] shall be barred of his action at common law for the damages so sued for, and no action shall be brought at common law, for kindling fires in the manner described in the §1228 [§9131-43]; but if any such fires shall spread and do damage, the person who kindled the same and any person present and concerned in driving such lumber, by whose act or neglect such fire is suffered to spread and do damage shall be liable in an action on the case for the amount of damages thereby sustained.

Common law remedy invoked, Sandberg v. Cavanaugh Timber Co. 9 W. 556.

## FISH.

### REGULATING SALMON FISHERIES ON THE COLUMBIA RIVER AND ITS TRIBUTARIES.

**§9131-45. Casting Sawdust in Streams. §1184.** It shall be unlawful for the proprietors of any sawmill, situated on any of the rivers, creeks or streams in said state of Washington, or any employe therein, to cast the sawdust made by such sawmill, or suffer or permit such sawdust to be thrown or discharged in any manner, into said rivers, creeks or streams within the state of Washington. For each and every willful violation of this section, the party guilty of such violation shall be liable to a fine of fifty dollars, to be recovered before a justice of the peace of the proper county. L. '83 36. Pollution of waters, later acts §§2491, 2530.

### BARRELS, PACKAGES OR CANS CONTAINING FISH TO BE MARKED.

**§9131-46. All Fish Packages to Be Marked. §1188.—426.** All barrels packages or cans containing fish caught in this state, and packed, barreled or canned therein, shall be marked by label or otherwise, in plain letters with the name of the place where said salmon were caught and also the name of the state, in full, and the name of the party or parties putting up the same, and for each package, barrel, part of a barrel or can not so marked, the person or persons whose duty it is to mark the same, shall be subject to a penalty of not less than ten dollars, to be recovered by action brought by any person first informing in a court having jurisdiction, and one-half of the sum recovered, shall go into the common school fund of the county where the offense was committed, and the other half to the informer.

## GAMBLING.

**AN ACT** relating to betting, wagering, pool-selling and book-making upon horse races, or upon the result of any trial or contest of speed or endurance of any animal, declaring the violation thereof a felony, fixing a penalty. Approved February 11, 1909. Laws '09 p 7.

**§9131-47. Race Track Gambling. §1.** Any person who receives, records or registers bets, stakes or wagers, or who sells pools, or makes a book or books, upon any horse race, or upon the result of any trial or contest of speed or power of endurance of any animal, whether such race, trial or contest takes place within or without this state; or any person who receives, registers, records, forwards or transmits, or purports or pretends to receive, register, record, forward or transmit, in any manner whatsoever, any money, checks, credits, or any other representative of value, or any property, thing or consideration of value whatsoever, bet, staked or wagered, by or for any other person, upon any such race or result, whether to be bet, staked or wagered within or outside this state; or any person who uses, or has in his possession for use, any book, paper, board, device, apparatus or paraphernalia, for the purpose, actual or pretended, of receiving, recording, registering, forwarding or transmitting any bets, stakes or wagers, or of book-making or pool-selling, upon any such race or result; or any person who keeps, manages, conducts, maintains or occupies any house, room, shop, shed, tenement, tent, booth, building, float or vessel, or any part thereof, or who keeps, manages, conducts, maintains or occupies any place or stand, of any kind, upon any public or private ground, street, park, garden, enclosure or place, for the purpose of receiving, recording, registering, forwarding or transmitting any bets, stakes or wagers, or of selling pools, or of book-making, upon any such race or result; or any person who being the owner, lessee or occupant of any house, room, shop, shed, tenement, tent, booth or building, float or vessel, or part thereof, or of any ground, park, garden, enclosure or place, knowingly permits the same to be used or occupied for any of the purposes herein prohibited, or who knowingly permits to be kept, exhibited or used therein any book, paper, board, device, apparatus or paraphernalia, for the purpose of recording or registering such bets, stakes, or wagers, or for the purpose of such pool-selling or book-making; or any person, whether as principal, employer, owner, proprietor, agent, employe or assistant, or as officer, agent or employe of a corporation, who aids, assists or abets, in any manner, any of the said acts or things which are hereby forbidden, is guilty of a felony, and, upon conviction thereof, shall be imprisoned in the penitentiary for a period of not less than one, nor more than three years.

Criminal code 1909 §8926.

**§9131-48. Evidences of Gambling Debt Void. §1254.** All notes, bills, bonds, mortgages, or other securities, or other conveyances, the consideration for which shall be money, or other things of value, won by playing at any unlawful game, shall be void and of no effect as between the parties to the same and all other persons, except holders in good faith without notice of the illegality of such contract or conveyance. L. '91 119.

**§9131-49. Recovery of Money Lost at Gambling. §1255—494.** All persons losing money or anything of value at or on any of said games, shall have a cause of action to recover from the dealer or player winning the same or proprietor for whose benefit such game was played or dealt, or such money or things of value won, the amount of the money or the value of the thing so lost.

Title of act sufficient to cover above not validate—police records introduced to section, *Maling v. Crummey* 5 W. 222. show payee gambler, harmless—instruction, *Ash v. Clark* 32 W. 390.

Check for advances is void between the parties—subsequent promise to pay does

**§9131-50. Letting Premises for Gambling a Misdemeanor. §1256.—495.** Every person who shall let or rent any room or building for a gaming house, or house of ill-fame, or for rent or hire, shall permit any game to be dealt, upon his premises prohibited by section 1253, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined in any sum not exceeding one hundred dollars.

Superior court has jurisdiction, Const., art. 4, §6, §7973. City may impose greater punishment by ordinance—justice's jurisdiction, *State v. Hagamori* 57 W. 623.



**§9131-51. Lessor May Avoid Lease.** §1257.—496. It shall be lawful for any person letting or renting any house, room shop or other building whatsoever, or any boat, booth, garden or other place, which shall, at any time, be used by the lessee or occupant thereof, or any other person with his knowledge or consent, for gambling purposes, upon discovery thereof, to avoid and terminate such lease, or contract of occupancy, and to recover immediate possession of said boat, building or other place above mentioned by an action at law for that purpose, to be brought before any justice of the peace of the county in which such use shall be permitted.

Supplementary—**AN ACT to prohibit the maintaining, conducting, operating, playing or using nickel-in-the-slot machines, or other devices of like character, wherein there enters an element of chance.** Approved March 18, 1901. General Repeal. Laws '01 p 311.

**§9131-52. Nickel-in-the-slot Machines Prohibited.** §1. Any person or persons who shall conduct, maintain or operate, either as owner or owners, proprietor or proprietors, lessee or lessees, employe or employes, agent or or agents, any nickel-in-the-slot machine, or other device of like character, wherein there enters an element of chance, whether the same be played or operated for money, checks, credits, or any other thing or representative of value, shall be guilty of a misdemeanor, and, upon conviction, shall be punished by a fine of not less than ten dollars nor more than one hundred dollars, and in default of the payment of the fine imposed shall be imprisoned in the county jail one day for each two dollars thereof.

**§9131-53. Machine Accessible Proof.** §2. For the purposes of trial and conviction under this act the possession of any such machine or device or keeping the same in any place accessible to the public shall be prima facie evidence against the person in possession thereof of guilt under this act.

**§9131-54. Disposition of Fines.** §3. Any fine imposed under this act shall be paid into the county treasury of the county wherein such conviction was secured, for the benefit of the school fund.

### HONEY BEES.

**AN ACT making it unlawful to kill or poison honey bees, and making it unlawful to place any poisoned or sweetened substance for the purpose of injuring honey bees, and prescribing the punishment therefor.** Approved February 13, 1897. Laws '97 p 11.

**§9134-54a. Maliciously Killing Honey Bees.** §1 It shall be unlawful for any person within the State of Washington to willfully or maliciously kill or poison any honey bees.

**§9131-54b. — Placing Poison.** §2. It shall further be unlawful for any person within said state to willfully or maliciously place any poisonous or sweetened substance for the purpose of injuring honey bees, in any place where such poisoned or sweetened substance is accessible to honey bees within this state. Any person or persons violating the provisions of this act shall, upon conviction thereof, be punished by a fine of not less than ten dollars, nor more than one hundred dollars.

### INDIANS.

**AN ACT to prohibit the sale or disposal of intoxicating drinks to Indians or to mixed bloods, and providing penalties for the violation thereof, and repealing section 7316 Ballinger's Annotated Codes and Statutes of Washington.** Approved March 11, 1909. Laws '09 p 537.

**§9131-55. Indians, Intoxicants to.** §1. That any person who shall sell, give away, dispose of, exchange, or barter any malt, spirituous or vinous liquor of any kind whatever, or any essence, extract, bitters, preparation, compound, composition, or any article whatsoever, under any name, label or brand, which produces intoxication, to any Indian, either of the whole or mixed blood to whom allotment of land has been made while the title to the same shall be held in trust by the government of the United States, or to any Indian of the whole or mixed blood, a ward of the government of the United States, under the charge of any Indian superintendent or

agent, or any Indian of the whole or mixed blood, over whom the government of the United States, through its departments, superintendent or agent exercises or assumes to exercise guardianship, or to any Indian of the whole or mixed blood the subject of any foreign nation, or to any Indian of the whole or mixed blood a member of any tribe of Indians, or to any Indian whatsoever, or a mixed blood Indian being more than one-eighth Indian, shall be guilty of a felony and punished therefor by imprisonment in the penitentiary for a period of not less than one or more than two years, or by imprisonment in the county jail not less than thirty days nor more than six months or by fine of not less than one hundred dollars (\$100) nor more than one thousand dollars (\$1,000) or by both such fine and imprisonment in the discretion of the court.

Is not obnoxious to U. S. Constitution, duce intoxication," State v. Bailey 67 W. State v. Mamlock 58 W. 631. 336.

Statute valid—status of child follows father—right to sell or drink liquor not constitutional right—intent, State v. Nicolls 61 W. 142.

One who, as an agent of an Indian, procures intoxicating liquor for such Indian, is guilty, State v. Reese 69 W. 437.

Not necessary to charge that the "spirited liquors" were such as would "pro-

That Indian is citizen immaterial—punishment by U. S. not a bar—excessive sentence, State v. Kenney 83 W. 441.

### IRRIGATION APPLIANCES.

Supplementary—AN ACT making it a misdemeanor for any person to interfere with any headgate, measuring box or other device used for measuring or distributing water for irrigating, stock or domestic purposes, after the same shall have been adjusted by the sheriff or other proper authority, and providing a penalty therefor; and making the owner or occupant of the premises where such waters are used prima facie guilty thereof. Approved February 28, 1901. Laws '01 p 35.

§9131-56. Tampering With Irrigation Appliances. §1. An person who shall tamper with, alter, change or in any wise interfere with any headgate, measuring box, dam or other device used for diverting, measuring or distributing any water for irrigating, stock or domestic purposes after the same shall have been regulated, fixed or adjusted by any sheriff or other proper authority, shall be guilty of a misdemeanor and upon conviction thereof shall be fined in any sum not less than ten nor greater than one hundred dollars.

§9131-57. Owner of Premises Prima Facie Guilty. §2. Whenever any such headgate, measuring box, dam or other device shall be altered, changed or tampered with after having been adjusted by such sheriff or other proper authority, so as to cause a greater quantity of water to flow into or through any irrigating or other ditch or canal, the person occupying, using or operating the lands or premises whereon such waters are used shall be prima facie guilty of violating the provisions of section 1 of this act.

### LARCENY.

§9131-58. Conviction of Principal Not Necessary. §850. In any prosecution for the offense of buying, receiving or aiding in the concealment of stolen property, money or goods, known to have been stolen, or for bringing or aiding in bringing into this state any such property, money or goods, known to have been stolen, it shall not be necessary to aver, nor on the trial thereof to prove, that the person who stole such property has been convicted, nor that the larceny of such property, nor that any conspiracy or agreement between the defendant and any other person or persons concerning the stealing, buying, receiving, concealing or bringing of such stolen property was committed or entered into within the jurisdiction of the court trying the case. L. '90 129. Larceny generally, §8944.

§9131-59. Title to Property. §851.—88. All property obtained by larceny, robbery or burglary, shall be restored to the owner; and no sale, whether in good faith on the part of the purchaser or not, shall divest the owner of his rights to such property; and it shall be the duty of the officer who shall arrest any person charged as principal or accessory in any robbery or larceny, to secure the property alleged to have been stolen, and he



shall be answerable for the same, and shall annex a schedule thereof to his return of the warrant.

**§9131-60. Costs of Keeping Property.** §852.—89. Upon any conviction of burglary, robbery, or larceny, the court may order a suitable recompense to the prosecutor, and also to the officer who has secured and kept the stolen property, not exceeding their actual expenses, with a reasonable allowance, for their time and trouble, to be paid by the county treasurer.

### MALICIOUS MISCHIEF.

**§9131-61. Malicious Injury to Animals.** §838. If any person maliciously kill, maim or disfigure any horse, cattle, dog or other domestic animal of another, or maliciously administer poison to any such animal or animals, or expose any poisonous substance with intent that the same should be taken by it or them, he shall be punished by imprisonment in the county jail not exceeding one year or by fine not exceeding \$300. L. '93 236.

Malicious mischief generally, §8970.

**§9131-62. Cruelty in Marking.** §840.—77. It shall not be lawful for any person to cut off more than one-half of the ear or ears of any domestic animal, such as an ox, cow, bull, calf, sheep, goat or hog and any person cutting off more than one-half of the ear or ears of any such animals, shall be deemed guilty of a misdemeanor, and upon conviction shall be fined in any sum less than twenty dollars.

**§9131-63. Malicious Trespass—Roads—Telegraph Appliances.** §841.—78. If any person maliciously injure, remove, or destroy any bridge rail, or plank road; or place or cause to be placed, any obstruction on such bridge or road; or willfully obstruct or injure any public highway or road; or maliciously cut, burn, or in any way break down, injure, or destroy any telegraph post, or in any way cut, break, or injure the wires or any apparatus thereto belonging, he shall be punished by imprisonment in the penitentiary not more than five years, or by fine not exceeding five hundred dollars and imprisonment in the county jail not exceeding one year.

### MARRIAGE.

**§9131-64. Marriages Prohibited.** §949.—186. Marriages in the following cases are prohibited:

1. When either party thereto has a wife or husband living at the time of such marriage.

2. When the parties thereto are nearer of kin to each other than second cousins whether of the whole or half-blood computing by the rules of the civil law.

3. It shall be unlawful for any man to marry his father's sister, mother's sister, father's widow, wife's mother, daughter, wife's daughter, son's widow, sister, son's daughter, daughter's daughter son's son's widow, daughter's son's widow, brother's daughter, or sister's daughter; it shall be unlawful for any woman to marry her father's brother, mother's brother, mother's husband, husband's father, son, husband's son, daughter's husband, brother, son's son, daughter's son, son's daughter's husband, daughter's daughter's husband, brother's son or sister's son; and if any person being within the degrees of consanguinity or affinity in which marriages are prohibited by this section, carnally know each other, they shall be deemed guilty of incest, and shall be punished by imprisonment in the state penitentiary for a term not exceeding ten years, and not less than one year.

Solemnizing unlawful marriage, §§3722, 89.

8834.

Marriage generally §3707.

Was not repealed by §8767, State v. Nakashima 62 W. 686.

Divorce should be granted in case marriage prohibited, Johnson v. Johnson 57 W. Section superseded as to incest by criminal code, State v. Bielma 86 W. 460.

**§9131-65. Person Solemnizing Unlawful Marriage.** §924.—161. Any person authorized by the laws of this state to join parties in marriage, who shall knowingly join in marriage any parties contrary to the provisions of the law, regulating marriages, shall, on conviction thereof, be fined in any sum not exceeding one thousand dollars.

**§9131-66. Failing to Return Certificate.** §925.—162. Any person having joined parties in marriage who shall fail to return a certificate thereof, within the time prescribed by law, shall be fined in any sum not exceeding three hundred dollars.

**§9131-67. Person Unauthorized Solemnizing Marriage.** §926.—163. Every person who shall undertake to join parties in marriage, knowing that he is not authorized so to do, shall, upon conviction thereof, be imprisoned in the county jail not more than three months, or fined in any sum not exceeding five hundred dollars.

### NUISANCE.

**§9131-68. Nuisance.** §1235.—474. Nuisance consists in unlawfully doing an act or omitting to perform a duty, which act or omission either annoys, injures or endangers the comfort, repose, health or safety of others; or offends decency, or unlawfully interferes with, obstructs or tends to obstruct or render dangerous for passage any lake or navigable river, bay, stream, canal, or basin, or any public park, square, street or highway; or in any way renders other persons insecure in life, or in the use of property.

Contractor leaving opening not a nuisance. *Everett v. Paschall* 61 W. 47.  
Nuisance owner is not liable, *Cary v. Sparkman & McLean Co.* 62 W. 363.

Nuisance of stock pens to residences  
Public nuisance, act '09, §9012; civil may be enjoined—intermittent injury—  
action for abatement of nuisance, §8231. suppression of business, *Wilcox v. Henry*  
Tuberculosis sanitarium in residence dis- 35 W. 591.

**§9131-69. Public Nuisance.** §1236.—475. A public nuisance is one which affects equally the rights of an entire community or neighborhood, although the extent of the damage may be unequal.

**§9131-70. Private Nuisance.** §1237.—476. Every nuisance not included in the definition of the last section is private.

Bawdy house as nuisance to residence city or existing at time of purchase, no  
may be abated by injunction—toleration by defense, *Ingersoll v. Rosseau* 35 W. 92.

**§9131-71. Nothing by Authority of Law Nuisance.** §1238.—477. Nothing which is done or maintained under the express authority of a statute can be deemed a nuisance.

**§9131-72. Successive Owners of Property Liable.** §1239.—478. Every successive owner of property who neglects to abate a continuing nuisance upon, or in the use of such property caused by a former owner, is liable therefor in the same manner as the one who first created it.

**Abatement Does Not Bar Damages.** §1240.—479. The abatement of a nuisance does not prejudice the right of any person to recover damages for its past existence.

### PUBLIC NUISANCE AND ABATEMENT THEREOF.

**§9131-73. Continued Existence Does Not Validate Public Nuisance.** §1241.—480. No lapse of time can legalize a public nuisance, amounting to an actual obstruction of public right.

Injunction without damages is equitable action and no jury is allowed, *Smith v. Mitchell* 21 W. 536.

**§9131-74. Remedies.** §1242.—481. The remedies against a public nuisance are: Indictment, a civil action, or abatement. The remedy by indictment shall be as regulated and prescribed in this chapter. When a civil action for damages is resorted to, the practice shall conform to chapter 50 [§8231] of the civil practice act under title, "Nuisance."

City may abate nuisance in street by bill in equity, *Moore v. Walla Walla* 2 W. T. 184. Nuisance can be injurious only to property of private corporation since it has not natural life—a saloon is not a nuisance to an employer though his employees resort to it and get drunk, *Northern Pac. R. R. Co. v. Whalen* 149 U. S. 157.

Public nuisance can be abated only by public officer unless there is private injury, *Griffith v. Holman* 23 W. 347.



**§9131-75. Civil Action for Public Nuisance.** §1243.—482. A private person may maintain a civil action for a public nuisance if it is specially injurious to himself but not otherwise.

Obstruction of road used twice a day by farmer for private purpose is special injury, *Ingalls v. Eastman* 61 W. 289. If highway in use as means of ingress and egress nuisance is "specially injurious," *Smith v. Mitchell* 21 W. 536.

**§9131-76. Abatement by Public Officers.** §1244.—483. A public nuisance may be abated by any public body or officer authorized thereto by law.

**§9131-77. Abatement by Any Person.** §1245.—484. Any person may abate a public nuisance, which is specially injurious to him by removing, or if necessary, destroying the thing which constitutes the same, without committing a breach of the peace or doing unnecessary injury.

**§9131-78. Public Nuisance.** §1246. It is a public nuisance,

1st: To cause or suffer the carcass of any animal or any offal, filth or noisome substance to be collected, deposited or to remain in any place to the prejudice of others.

2nd: To throw or deposit any offal or other offensive matter, or the carcass of any dead animal, in any watercourse, stream, lake, pond, spring, well, or common sewer, street or public highway, or in any manner to corrupt or render unwholesome or impure the water of any such spring, stream, pond, lake or well, to the injury or prejudice of others.

3rd: To obstruct or impede, without legal authority, the passage of any river, harbor or collection of water.

4th: To obstruct or encroach upon public highways, private ways, streets, alleys, commons, landing places, and ways to burying places.

5th: To carry on the business of manufacturing gun-powder, nitroglycerine or other highly explosive substance, or mixing or grinding the materials therefor, in any building within fifty rods of any valuable building, erected at the time such business may be commenced.

6th: To establish powder magazines near incorporated cities or towns, at a point different from that appointed by the corporate authorities of such city or town; or within fifty rods of any occupied dwelling house.

7th: To erect, continue, or use any building, or other place, for the exercise of any trade; employment or manufacture, which, by occasioning obnoxious exhalations, offensive smells or otherwise is offensive or dangerous to the health of individuals or of the public.

8th: To suffer or maintain on one's own premises or upon the premises of another, or to permit to be maintained on one's own premises any place where wines, spirituous, fermented, malt or other intoxicating liquors are kept for sale or disposal to the public in contravention of law.

And every person who has the care, government, management, or control of any building, structure, powder magazine, or any other place mentioned in this act, shall, for the purposes of this act, be taken and deemed to be the owner or agent of the owner or owners of such building, structure, powder magazine or other place, and as such may be proceeded against for the erecting, contriving, causing, continuing or maintaining such nuisance. L '95 19.

Guy wire of telephone company anchored near traveled part of highway is a nuisance, *Pacific T. & T. Co. v. Hoffman* 208 Fed. 221.

Fence across highway is a nuisance and may be removed by any one without committing a breach of the peace and equity will not enjoin its removal, *Johnson v. Maxwell* 2 W. 482.

Roads over public lands may be established by prescription under U. S. Rev. Stat. §2477, *Smith v. Mitchell* 21 W. 536.

Information alleging established road any method of establishment may be

shown—slight changes in road by user is immaterial—instruction as to time of user inconsistent held good—defendant not allowed to testify he had never consented nor produce letter to show good faith, *State v. Horlacher* 16 W. 325.

In showing powder magazine a nuisance reckless handling in transportation to and from magazine cannot be shown—abatement cannot follow connection of employees in charge, *State v. Pagett* 8 W. 579.

Intent to maintain in future is not a misdemeanor, *State v. Shaffer* 31 W. 305.

Charging nuisance in present tense is insufficient, *State v. Schaffer* 31 W. 305.

**§9131-79. Immoral Places Are Nuisances. §1247.—486.** Houses of ill-fame, kept for the purpose, in which are embraced all squaw dance houses, or squaw brothels, otherwise called mad houses, all houses, rooms, saloons, booths, scows boats, or other structures used as a place of resort, where women are employed to draw custom, dance, or for purposes of prostitution; all public houses or places of resort where gambling is carried on, or permitted, all houses, or places within any city, town or village, or upon any public road, or highway where drunkenness, gambling, fighting or breaches of the peace are carried on, or permitted; all opium dens, or houses or places of resort where opium smoking is permitted, are nuisances, and may be abated, and the owners, keepers, or persons in charge, thereof, and persons carrying on such unlawful business, shall be punished as provided in this chapter.

Owner rented rooms and accepted fee ment must be charged State v. Brown 7  
for each act, held guilty of accepting earn- W. 10.  
ings of prostitute, State v. Columbus 74 Necessary to allege that the character  
W. 290. or the women or their conduct such as to

Character of women and their deport- debauch, etc., State v. Clancy 99 W. 47.

**§9131-80. All Nuisances Punishable—Penalty. §1248.—487.** Whoever is convicted of erecting causing or contriving a public or common nuisance as described in this chapter or at common law, when the same has not been modified or repealed by statute, where no other punishment therefor is specially provided shall be punished by a fine not exceeding one thousand dollars, and the court with or without such fine, may order such nuisance to be abated, and issue a warrant as hereinafter provided.

**§9131-81. Judgment of Guilt and Abatement—Costs and Damages. §1249.—488.** When, upon indictment, complaint or action, any person is adjudged guilty of a nuisance, the court before whom such conviction is had, may, in addition to the fine imposed, if any, or to the judgment for damages or costs, for which a separate execution may issue, order that such nuisance be abated, or removed at the expense of the defendant, and after inquiry into and estimating, as nearly as may be, the sum necessary to defray the expenses of such abatement the court may issue a warrant therefor.

If keepers of house change warrant ineffective, Coffey v. Territory 1 W. 325.

**§9131-82. Justices' Jurisdiction. §1250.—489.** When the conviction is had upon an action before a justice of the peace, and no appeal is taken, the justice, after estimating as aforesaid, the sum necessary to defray the expenses of removing or abating the nuisance may issue a like warrant.

**§9131-83. Stay of Judgment—Bond—Default. §1251.—490.** Instead of issuing such warrant, the court or justice may order the same to be stayed upon motion of the defendant, and upon his entering into a bond in such sum and with such surety as the court may direct, to the state, conditioned either that the defendant will discontinue said nuisance, or that within a time limited by the court, and not exceeding six months, he will cause the same to be abated and removed, as either is directed by the court, and upon his default to perform the condition of his bond, the same shall be forfeited, and the court, in term time or vacation, or justice of the peace, as the case may be, upon being satisfied of such default, may order such warrant forthwith to issue, and a rule to show cause why judgment should not be entered against the sureties of said bond.

**§9131-84. Costs and Damages—Execution Levy. §1252.—491.** The expense of abating a nuisance, by virtue of a warrant, can be collected by the officer, in the same manner as damages and costs are collected on execution, except that the materials of any buildings, fences, or other things that may be removed as a nuisance, may be first levied upon and sold by the officer, and if any of the proceeds remain after satisfying the expense of the removal, such balance must be paid by the officer to the defendant or to the owner of the property levied upon, and if said proceeds are not sufficient to pay such expenses, the officer must collect the residue thereof.



**PAUPERS.**

**§9131-85. Bringing Pauper Into State.** §932.—169. If any person knowingly bring within this state any pauper or poor person, with the intent of making him a charge on any county or counties therein, he shall be punished by fine not exceeding five hundred dollars and stand charged with his support.

Bringing pauper into county §1703.

**PENSIONERS.**

**Supplementary—AN ACT** making it unlawful for any judge, or county officer to charge soldiers, or seamen, or the widows, orphans, or legal representatives thereof, any fee for services in matters pertaining to pensions, or pension dues, and declaring an emergency. Approved February 20, 1891. General repeal. Laws '91 p 28.

**§9131-86. Charge by Public Officer to Pensioner for Certificate Prohibited.** §1. That no judge, or clerk of court, county clerk, county auditor, or any other county officer, shall be allowed to charge any honorably discharged soldier, or seaman, or the widow, orphan, or legal representative thereof, any fee for administering any oath, or giving any official certificate for the procuring of any pension, bounty, or back pay, nor for administering any oath or oaths, and giving the certificate required upon any voucher for collection of periodical dues, from the pension agent, nor any fee for services rendered in perfecting any voucher.

**§9131-87. — Penalty.** §2. That any such officer, who may require and accept fees, for such services, shall be deemed guilty of a misdemeanor, and on conviction thereof, shall be fined in any sum, not less than ten dollars, nor more than fifty dollars.

**POISON.**

**AN ACT** in relation to poisons and prohibiting the combination of poisonous substances with crackers, bread or other preparations in any manner resembling or in similitude of any edible product and prescribing penalties for its violations. Approved March 9 1905. Laws '05 p 259.

**§9131-88. Poison in Food.** §1. It shall be unlawful for any person to sell, offer for sale, use, distribute, or leave in any place, any crackers, biscuit, bread or any other preparation resembling or in similitude, of any edible product, containing arsenic, strychnine or any other poison.

Polsoning food, later act §8857.

**§9131-89. Penalty.** §2. Any person violating the provisions of this act shall upon conviction be punished by a fine of not less than ten (\$10.00) dollars nor more than five hundred dollars (\$500.00).

**QUARANTINE.**

**Supplementary—AN ACT** relating to quarantine in cities and towns. Approved March 6, 1901. Laws '01 p 59.

**§9131-90. Breaking Quarantine.** §1. Whenever a house has been quarantined by the board of health in any city or towns in this state, it shall be unlawful for any person, without the permission of the health officer, to leave the said house.

**§9131-91. — Penalty.** §2. Any person violating the provisions of this act, shall be deemed guilty of a misdemeanor and shall be fined in any sum not exceeding one hundred dollars, or imprisoned in the county jail for a period of thirty days, or both such fine and imprisonment.

**RIVERS AND HARBORS.**

**§9131-92. Discharging Ballast. §918.** Every master or mate, or other officer or other person, belonging to or in charge of any vessel, who shall discharge or cause to be discharged the ballast of such vessels into the navigable portions or channels or of any of the inlets, bays, harbors, or rivers within or bordering on this state, where the water is less than twenty fathoms deep, shall, on conviction thereof, be fined in any sum not less than seventy-five dollars nor more than five hundred dollars; Provided, That nothing in this section shall be so construed as to prevent any such person from discharging ballast from such vessel on the beach at or above ordinary high tide in all waters where the tide ebbs and flows, and that no ballast shall be discharged on any of the flats included within the boundary of any city or townsite, or extension thereof; And provided further, That in harbors within or in front of any incorporated city, where the waters are less than twenty fathoms deep, a section of said harbor may be set aside and designated, by the city council of said city as a ballast ground, where ballast may be discharged, under control of a harbor master to be appointed by the council. L. '97 18.

**§9131-93. Obstructing Stream. §919.** Every person who shall in any manner obstruct the navigable portion or channel of any bay, harbor, or river or stream within or bordering upon this state navigable and generally used for the navigation of vessels, boats, or other water crafts, or for the floating down of logs, cord wood, fencing posts or rails, shall on conviction thereof be fined in any sum not exceeding three hundred dollars; provided, that the placing of any mill dam or boom across a stream used for floating saw logs, cord wood, fencing posts or rails shall not be construed to be an obstruction to the navigation of such stream, if the same shall be so constructed as to allow the passage of boats, saw logs, cord wood, fencing posts or rails, without unreasonable delay. L. '88 190.

**ROADS.**

**Supplementary—AN ACT defining the duties of persons running traction engines on the public highway.** Approved February 14, 1890. Laws '90 p 523.

**§9131-94. Traction Engines on Highways. §1.** That whenever any person in charge of, and running any traction engine propelled by steam upon any county road or public highway, except in towns, cities or villages, shall meet or come in close proximity to any person driving a team of horses, it shall be the duty of the person in charge of such engine to come to a full stop and remain standing until the team has passed.

**§9131-95. — Penalty. §2.** Any person violating the provisions of this act, shall be deemed guilty of a misdemeanor, and on conviction shall be fined not less than ten nor more than fifty dollars.

**SALOONS.**

**Supplementary—AN ACT to prohibit the employment of females in places where intoxicating liquors are sold as a beverage.** Approved March 19, 1895. Laws '95 p 177.

**§9131-96. Females Not to Be Employed in Saloons. §1.** No female person shall be employed in any capacity in any saloon, beer hall, bar room, theatre, or place of amusement, where intoxicating liquors are sold as a beverage, and any person or corporation convicted of so employing, or of participating in so employing, any such female person shall be fined not less than five hundred dollars, and any person so convicted may be imprisoned in the county jail for a period of not less than six months.

**Is a valid exercise of the police power.** Citizens cannot contract against good morals—name of female employed not necessary. State v. Considine 16 W. 358.  
In re Considine 83 Fed. Rep. 157.



**§9131-97. Signs.** §6 (5). Any person or persons, owning, operating or maintaining any saloon or place where spirituous liquors are sold, house of prostitution, or where gambling or gaming is conducted, shall cause a sign to be put in a conspicuous place on the outside of such building or room, with the words thereon "minors not allowed within," in plain legible letters in the English language. L. '95 336.

### SEA GULLS.

Supplementary—AN ACT for the protection of sea gulls. Approved February 21, 1891. Laws '91 p 29.

**§9131-98. Unlawful to Kill Sea Gulls.** §1. It shall be unlawful for any person, in this state, or upon or about any of the waters or shores of this state, to take, injure, or kill, or endeavor to take, injure, or kill, any sea gull, of any kind or species.

Misdemeanor to injure or kill and insectivorous bird, §9131-16.

**§9131-99. — Penalty.** §2. Any person violating any of the provisions of this act shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be punished by a fine of not less than five nor more than twenty-five dollars, and in default of payment of the fine imposed, shall be imprisoned in the county jail for the period of one day for each two dollars of the fine so imposed.

**§9131-100. Magistrates' Jurisdiction.** §3. Police justices or other magistrates of incorporated cities or towns, and justices of the peace (not excluding the jurisdiction of other courts), shall have jurisdiction over all proceedings under this act.

### SEAMEN.

#### TO PREVENT PERSONS FROM ENTICING SEAMEN TO DESERT.

**§9131-101. Enticing Seaman to Desert.** §1222.—461. If any person or persons shall entice any seaman to desert from any vessel, belonging to any citizen or citizens of the United States or any foreign country, while lying within the waters of this state, and on board of which said seaman shall have shipped for a term or voyage unexpired at the time of such enticement, such person or persons shall be deemed guilty of a misdemeanor, and on conviction by any court of competent jurisdiction, shall be sentenced for the first offense, to imprisonment in the county jail not less than two months, nor more than six months, or to a fine not less than fifty dollars, nor more than five hundred dollars; and for each subsequent offense, to imprisonment not less than six months, nor more than two years, or a fine of not less than five hundred dollars nor more than one thousand.

**§9131-102. Harboring Seaman.** §1223.—462. Any person or persons who shall harbor or secrete [a] seaman shipped as aforesaid, knowing him to be so shipped, and with a view to persuade or enable said seaman to desert, shall be deemed guilty of a misdemeanor, and punished as provided in section twelve hundred and twenty-two.

### SODOMY.

Supplementary—AN ACT to provide for the punishment of the crime against nature and declaring an emergency. Became a law without approval March 14, 1893. Laws '93 p 470.

**§9131-103. Sodomy.** §1. Every person who shall commit the infamous and detestable crime against nature, either with mankind, or with any beast, shall be deemed guilty of sodomy, and upon conviction thereof shall be punished by imprisonment at hard labor in the state penitentiary for not less than ten nor more than fourteen years.

Crime against nature, later act §8768.

§9131-104. Penetration Necessary. §2. Any sexual penetration however slight is sufficient to complete the crime against nature.

### TRESPASS.

§9131-108. Malicious Trespass on Unsurveyed Lands. §17. Any person or persons who shall willfully and maliciously disturb or in any wise injure or destroy, the dwelling house or other building or any fence inclosing or being on the claim of any settler upon the unsurveyed public lands in this state shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined not less than fifty nor more than one hundred dollars for each and every offense, to which may be added imprisonment in the county jail not exceeding ninety days. L. '91 119.

Malicious mischief generally, §8970; trespass, §8984.

Supplementary—AN ACT declaring certain acts to be misdemeanors and providing punishment therefor. Approved January 15. 1886. Laws '86 p 78.

§9131-109. Trespass. §1. Every person who willfully commits any trespass by either:

(1.) Cutting down, destroying, or injuring any kind of wood or timber, or any tree, standing or growing upon the lands of another; or

(2.) Carrying away any kind of wood or timber lying on such lands; or

(3.) Maliciously injuring or severing from the freehold of another anything attached thereto, or the produce thereof; or

(4.) Digging, taking, or carrying away from any lot situated within the limits of any incorporated town or city, without the license of the owner or legal occupant thereof, any earth, soil, or stone; or

(5.) Putting up, affixing, fastening, printing or painting upon any property belonging to the state or to any county, city, town, or village, or dedicated to the public or upon any property of any person or corporation, without license from the owner, any notice, advertisement or designation of, or any name for, any commodity, whether for sale or otherwise, or any picture sign or device intended to call attention thereto: Provided, That nothing contained in this subdivision shall be construed to prohibit the posting of legal notices. \* \* \*

Supplementary—AN ACT to define and punish trespass. Approved March 15, 1890. General Repeal. Laws '90 p 124.

Former act '83 p 56.

§9131-110. Trespass With Intent to Rob Mine. §6. Any person who shall break or rob in any manner, or who shall attempt to break or rob, any flume, rocker, quartz mill, quartz vein, or lode, bed-rock sluice, sluice-box, or mining claim not his own, or who shall trespass upon such mining claim with the intent to commit a felony, shall, upon conviction thereof be punished by imprisonment in the penitentiary of this state not less than one nor more than five years, or by fine not less than one hundred dollars nor more than one thousand dollars, or by both such imprisonment and fine, as the court or judge thereof may direct.

§9131-111. Trespass and Setting Fire. §9. If any person shall maliciously or wantonly set on fire any prairie or other grounds, other than his own or those of which he is in the lawful possession, or shall wilfully or negligently permit or suffer the fire to pass from his own grounds or premises to the injury of another, such person, upon conviction thereof, shall be punished by imprisonment in the county jail not less than three months nor more than one year, or by fine not less than fifty nor more than five hundred dollars.

Fires, act '09, §8840; laws not repealed, §§9131-37, 9131-39.



Substitute—AN ACT making it unlawful to injure or damage in any way the public lands of the state of Washington, and prescribing the punishment therefor. Approved March 6, 1899. Laws '99 p 47.

Former laws '90 p 124, '97 p 247.

§9131-112. **Trespass on State Lands.** §1. If any person shall cut down, destroy, injure, or cause to be cut down, destroyed or injured, any timber standing, growing or felled upon any of the lands of the state of Washington before deed shall have been issued by the state therefor as provided by law, or shall take or remove, or cause to be taken or removed from any such lands, any timber, wood, clay, sand or other material or substance thereon, or shall dig, quarry, take or remove any mineral (except by contract with the state), earth or stone from such lands, or shall cause to be dug, quarried, taken or removed any mineral (except by contract with the state) earth or stone from such lands, or shall otherwise injure, deface or damage, or shall cause to be injured, defaced or damaged any such lands, he shall be deemed guilty of a misdemeanor.

Civil liability of treble damages, §6435.

§9131-113. **Consent of State.** §2. That nothing in this act shall be so construed as to prevent any person, who shall lease said lands or hold the same under contract with the state for the purchase thereof and occupy the same, for the purpose of a home, from cutting such timber as may be necessary for domestic use or to clear land for actual cultivation: Provided, That such lessee or contractor may sell such timber so cut in good faith for the purpose of clearing such land for cultivation: Provided further, however, That before any timber may be sold by any such lessee or contractor he must first obtain the written consent of the commissioner of public lands of the state of Washington to such sale; otherwise such lessee or contractor shall not have the benefit of the provisions of this section.

§9131-114. **Penalty.** §3. Any person or persons violating the provisions of this act shall be guilty of a misdemeanor and, upon conviction thereof, be punished by a fine of not less than twenty-five dollars nor more than one thousand dollars, or by imprisonment in the county jail of the county in which such conviction was had, for a time not less than one month and not more than one year, or by both fine and imprisonment.

Supplementary—AN ACT to punish the injury or destruction of property and records upon public lands. Approved March 13, 1899. Laws '99 p 186.

§9131-115. **Trespass on Public Lands.** §1. If any person shall maliciously or wantonly destroy or deface any cabin or other building or place of shelter or any of the contents of such cabin, building or shelter constructed by any person or persons or society of persons upon any public land of the state of Washington, or of the United States within the state of Washington, or upon any land not owned by such person so destroying or defacing the same, he shall be deemed guilty of a misdemeanor: Provided, That the provisions of this act shall not apply to bona fide settlers on government lands.

§9131-116. **Public Monuments and Records.** §2. If any person shall maliciously or wantonly remove, destroy or carry away any record or record book or document of any kind or any box or other receptacle for containing the same or any instrument or device for scientific purposes established or placed upon any mountain peak or summit or at any other place of resort, or upon any land belonging to this state or to the United States, or in or upon any body or stream of water within this state, such person shall be deemed guilty of a misdemeanor.

§9131-117. **Penalty.** §3. Every person convicted of a violation of any of the provisions of this act shall be punished by a fine of not less than ten dollars nor more than one hundred dollars or by imprisonment in the county jail not less than ten days nor more than six months or by both such fine and imprisonment. Any person acting as informer, in case of conviction under this act, shall be entitled to one-half of the fine imposed.

## VAGRANCY.

§9131-121. Justices' Jurisdiction. §1272. Upon complaint made on oath to any justice of the peace against any person as being such vagrant within his local jurisdiction, as defined in the last preceding section, he shall issue a warrant for the arrest of such person, and the complaint, warrant arrest, and examination shall be governed by the provisions of this code relating to the examination and commitment for trial of persons charged with offenses, so far as the same may be applicable.

Vagrancy—criminal code, §9131.

§9131-122. Peace Officers Shall Arrest Vagrants. §1273.—512. All peace officers shall arrest any vagrant whom they may find at large, and take him before some justice of the peace, of the county, city, or town, in which the arrest is made.

## VENEREAL DISEASES.

AN ACT to prohibit the advertising of treatment or cure of venereal diseases and disorders, declaring the same a misdemeanor and prescribing a penalty therefor. Approved March 6, 1905. Laws '05 p 142.

§9131-123. Venereal Diseases, Advertising Cure. §1. Any person who shall advertise that he will treat venereal diseases or disorders, or ~~any~~ <sup>be</sup> guilty of a misdemeanor and upon conviction thereof shall be imprisoned in the County jail for a period of not less than one month nor more than six months. Any owner or managing officer of any newspaper in whose paper shall be printed or published such advertisement as is described in this act shall be guilty of a misdemeanor, and upon conviction thereof shall be imprisoned in the County jail for a period of not less than one month nor more than six months.

Advertising cures, later act §9022.

## CRIMINAL PROCEDURE

ACCESSORIES §9132.

ACCUSED, RIGHTS OF §9136.

Appeals to supreme court §7290.

Appeal is stay §7330.

ARRAIGNMENT §9151.

ARREST AND BAIL §9174.

CONSTRUCTION §9193.

CORPORATIONS §9199.

COSTS §9202.

DOCKET §9213.

EVIDENCE §9214.

Fines all paid into current state school fund §5109.

FORMER CONVICTION §9221.

FUGITIVES §9225.

GRAND JURY §9232.

INDICTMENT §9249.

INFORMATION §9257.

INDICTMENT AND INFORMATION §9266.

INSANE §9293.

JUDGMENT §9303.

LIMITATION OF ACTIONS §9340.

NEW TRIALS §9341.

RECOGNIZANCES §9347.

REWARDS §9352.

Roads, county prisoners to work on §5983.

Search Warrants §9357.

State Reformatories §6730.

Commitment, etc. §6739.

State training school, commitment to §§4843, 8711; management, etc. §4841; for girls §6769.

TRIALS §9361.

VENUE §9391.

## ACCESSORIES.

## PARTIES TO CRIME.

§9132. Accessories and Principals in Second Degree Are Principals. §956.—193. No distinction shall exist between an accessory before the fact and a principal, or between principals in the first and second degree, and all persons concerned in the commission of an offense, whether they directly counsel the act constituting the offense, or counsel, aid and abet in its commission, though not present, shall hereafter be indicted, tried and punished as principals.

Later law, §8695.

Must charge defendant as accessory if proof of being accessory alone is relied upon for conviction, State v. Beebe. 66 W.



463.

One charged with first degree murder as accessory before fact cannot be convicted of manslaughter when evidence shows he was not present at commission of crime, but merely conspired, State v. Robinson, 12 W. 349.

Being present at homicide, aiding and abetting, sustains second degree murder verdict, State v. Robinson, 12 W. 491.

Counseling and abetting manslaughter sustains verdict as principal State v. McFadden, 48 W. 259.

Accessory may be charged as principal

and shown by evidence to be accessory or principal in second degree, State v. Webb 20 W. 500.

Accessory cannot be informed against in some offenses as in rape or burglary in same words as if principal—purpose of statute stated, State v. Gifford 19 W. 464; State v. Morgan 21 W. 355.

Accessory before the fact is charged as a principal committing the crime, State v. Golden 11 W. 422.

Accessory may be charged as principal, State v. White 10 W. 611.

Cited 86 W. 276.

**§9133. Accessories After the Fact.** §957.—194. Every person not standing in the relation of husband or wife, parent or grand parent, child or grand child, brother or sister, by consanguinity, or affinity to the offender, who after the commission of any felony, shall, harbor, conceal, or maintain, or assist any principal, felon, or accessory before the fact, or shall give the offender any other aid, knowing that he had committed a felony, or had been accessory thereto before the fact, with intent that he shall avoid or escape from detection, arrest, trial or punishment, shall be deemed accessory after the fact, and shall, on conviction thereof, be imprisoned in the county jail not more than one year or be fined in any sum not exceeding five hundred dollars.

Accessories, later act §8696.

**§9134. Accessory Punished Without Principal.** §958. Every person who shall become an accessory after the fact to any felony may be indicted, convicted and punished, whether the principal felon shall or shall not have been convicted previously, or shall or shall not be amenable to justice by any court having jurisdiction to try the principal felon. L. '91 46.

**§9135. Venue of Trial of Accessory.** §6. An accessory after the fact to a felony may be tried either in the county in which he shall have become an accessory, or in the county in which the felony shall have been committed. L. '91 46.

## ACCUSED, RIGHTS OF, ACT 1909.

### CHAPTER 2.—Rights of Accused.

**§9136. Right to Counsel.** §53. Whenever a defendant shall be arraigned upon the charge that he has committed any felony, and shall request the court to appoint counsel to assist in his defense, and shall by his own oath or such other proof as may be required satisfy the court that he is unable, by reason of poverty, to procure counsel, the court shall appoint counsel, not exceeding two, for such defendant, to be paid upon its order by the county in which such proceeding is had, compensation not exceeding ten dollars per day for each counsel, for the number of days such counsel is actually employed in court upon the trial. Minn. C. '05 §4789.

Work cannot be required before conviction §3424.

Grand jury, accused not entitled to appear before §9245.

Constitutional rights, Const., art. 1, §20; former laws not repealed, §9148.

Accused, how held—court must be competent, §9148.

Five days including time held before committing magistrate, State v. Humason 5 W. 499; repealed as Bal. Code §§6926, 8739.

Right to counsel and witnesses face to face, Const., art. 1, §22, §9170.

Officer executing warrant may take bail §9182.

Officer must show warrant and inform defendant that he acts under its authority §9178.

Right to be tried separately if several defendants, §9377.

Right to compound misdemeanor 135 §9189.

Right to jury list, witnesses and copy of indictment or information without fees §9187.

Right to one day to plead, §9152.

Prisoner acquitted is not chargeable with any costs whatever, §9202.

Grounds upon which information must be set aside, §9265; indictment, §9253.

**§9137. Witnesses Face to Face.** §54. Every person accused of crime shall have the right to meet the witnesses produced against him face to face: Provided, That whenever any witness whose deposition shall have been taken

pursuant to law by a magistrate, in the presence of the defendant and his counsel, shall be absent, and cannot be found when required to testify upon any trial or hearing, so much of such deposition as the court shall deem admissible and competent shall be admitted and read as evidence in such case.

Constitution provides for witnesses "face to face, Const., art. 1. §22.

**§9138. Right to Subpoena. §55.** Every person charged with the commission of a crime shall have the right upon the trial of such charge to be heard in person or by counsel, and to produce witnesses and proofs in his favor and to have compulsory process to compel the attendance of all witnesses who may be necessary for his proper defense.

Constitution provides evidence, Const., Order of court must be had for witnesses, art. 1, §22. State ex rel. Carraher v. Graves 13 W. 485.

**§9139. Presumption of Innocence—Conviction Lowest Degree. §50.** Every person charged with the commission of a crime shall be presumed innocent until the contrary is proved by competent evidence beyond a reasonable doubt; and when an offense has been proved against him, and there exists a reasonable doubt as to which of two or more degrees he is guilty, he shall be convicted only of the lowest. Minn. C.'05 §4784.

Justice's jurisdiction, §91381.

Jury to determine degree, §§8698, 9383.

Degree of proof applies only to facts constituting crime and not evidentiary facts, 37 Minn. 493, 35 N. W. 373; 29 Minn. 193, 12 N. W. 524; 90 Minn. 183, 96 N. W. 330.

"Reasonable doubt" defined, 56 Minn. 226, 239, 55 N. W. 652, 57 N. W. 1065;

should be defined by the court only on request of jury, 38 Minn. 438, 38 N. W. 355; 14 Minn. 105, Gil. 75.

Definitions considered, 10 Minn. 407, Gil. 325; 12 Minn. 293, Gil. 191; 14 Minn. 105, Gil. 75; 18 Minn. 208, Gil. 191; 35 N. W. 373; 38 N. W. 355; 75 N. W. 235; 96 N. W. 330; 101 N. W. 499.

Cited 228 Fed. 980.

**§9140. Conviction, Only on Confession or Verdict. §57.** No person informed against or indicted for a crime shall be convicted thereof, unless by admitting the truth of the charge in his plea, by confession in open court, or by the verdict of a jury, accepted and recorded by the court. Minn. C.'05 §4785.

Confession as evidence, §9398.

Does not apply in case of refusal to plead,

Court may not direct verdict of guilty, State v. Harding 20 W. 556.

State v. Holmes, 68 W. 7.

**§9141. Bail, When Allowable. §58.** Every person charged with an offense, except that of murder in the first degree where the proof is evident or the presumption great, may be bailed by sufficient sureties, and bail shall justify and have the same rights as in civil cases, except as otherwise provided by law. The amount of bail in each case shall be determined by the court in its discretion and may from time to time be increased or decreased as circumstances may justify.

Bail must be indorsed on warrant, §9147.

Surety on bail bond in U. S. district court

When bail allowed, Const., art. 1, §20; shall not be excessive, Const., art. 1, §14.

has contribution against co-surety, Belond v. Guy 20 W. 160.

**§9142. Proceedings Within Thirty Days. §59.** Whenever a person has been held to answer to any criminal charge, if an indictment be not found or information filed against him within thirty days, the court shall order the prosecution to be dismissed, unless good cause to the contrary be shown.

Defendant must act before information filed, State v. Lorenzy 59 W. 308.

called to plead—is not bar, State v. Seright 48 W. 307.

Request of counsel of accused excuse for delay, State v. Fletcher 50 W. 303.

Information not filed, defendant must be dismissed and bail bond released, State v. Lewis 35 W. 261.

Objection must be made when accused

**§9143. Trial Within Sixty Days. §60.** If a defendant indicted or informed against for an offense, whose trial has not been postponed upon his own application, be not brought to trial within sixty days after the indictment is found or the information filed, the court shall order it to be dismissed, unless good cause to the contrary is shown.

Trial in five days not jurisdictional under L. '91 64, §90, unless timely objection is made, State v. Macleod 78 W. 175. Sec-

tion repealed, L. '09 906.

State may appeal from judgment of dismissal, State v. Miller 82 W. 477.

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refusal to dismiss presumed sufficient if no showing, State v. Clay 100 W. 417.



Prisoner released on habeas corpus after sixty days, State ex rel. Shattuck v. French 82 W. 330.

Statute satisfied if first trial within sixty days, hence in appeal from justice's court defendant cannot invoke the statute, State v. Jones 80 W. 335.

Continuance within time properly granted the state for absent witness, State v. Grune 72 W. 448.

Where defendant's trial was delayed that his demurrer might be heard he was not entitled to a dismissal, State v. Fox, 71 W. 185.

Motion to dismiss must be made before trial, State v. Alexander, 65 W. 488.

Does not apply to a second trial after an appeal, State v. Miller 72 W. 154, 174.

Defendant not entitled to dismissal on his own appeal in superior court, State v. Parmeter 49 W. 435.

Sixty days runs from new trial when granted, In re Murphy 7 W. 257.

Trial had after sixty days will be presumed regular—plea entered forty-five days after information and no showing of time of arraignment will not be reviewed, State v. Van Waters 36 W. 358.

Dismissal is not bar, State ex rei. Repath v. Caldwell 9 W. 336.

Failure of trial because of no term of court with jury defendant entitled to discharge, State v. Brodie 7 W. 442.

Sixty days runs from a second information, State v. Hansen 10 W. 235.

**§9144. Discharge of Defendant and Bail Upon Dismissal.** §61. Whenever the court shall direct any criminal prosecution to be dismissed, the defendant shall, if in custody, be discharged therefrom, or if admitted to bail, his bail shall be exonerated, and if money has been deposited instead of bail it shall be refunded to the person depositing the same.

**§9145. Nolle Prosequi.** §62. The court may, either upon its own motion or upon application of the prosecuting attorney, and in furtherance of justice, order any criminal prosecution to be dismissed; but in such case the reason of the dismissal must be set forth in the order, which must be entered upon the record. No prosecuting attorney shall hereafter discontinue or abandon a prosecution except as provided in this section.

Section does not apply to amendment of information, State v. Haffer 94 W. 136. 135 §123.

Reasons do not have to be given when new information is to be filed, State v. Hansen 10 W. 235.

**§9146. Dismissal, When a Bar.** §63. An order dismissing a prosecution under the provisions of sections 59, 60, or 62 of this act shall bar another prosecution for a misdemeanor or gross misdemeanor where the prosecution dismissed charged the same misdemeanor or gross misdemeanor; but in no other case shall such order of dismissal bar another prosecution.

Dismissal by justice on charge of gross misdemeanor does not preclude charge of felony for same offense—following section does not apply, State v. Wickstrom 92 W. 503.

Dismissal for variance with another information is not a bar, State v. Poole, 64 W. 47.

Information for misdemeanor not included offense quashed is not bar to information for felony, State v. Campbell 40 W. 480.

Discharge on information for assault and battery is bar to charge for attempted mayhem on same facts, State v. Durbin 32 W. 289.

Discharge under §9142 is not a bar, State ex rel. Repath v. Caldwell 9 W. 336.

Dismissal is not bar to felony, State v. Lewis 31 W. 75.

One charged with felony but convicted of a misdemeanor is not entitled to claim bar because of the dismissal of a prior information, State v. Armstrong 29 W. 57.

**§9147. Acquittal, When a Bar.** §64. No order of dismissal or directed verdict of not guilty on the ground of a variance between the indictment or information and the proof, or on the ground of any defect in such indictment or information, shall bar another prosecution for the same offense. Whenever a defendant shall be acquitted or convicted upon an indictment or information charging a crime consisting of different degrees, he cannot be proceeded against or tried for the same crime in another degree, nor for an attempt to commit such crime, or any degree thereof. Minn. C.'05 §4792.

Variance, second charge §9379.

Second charge if judgment arrested §9345.

Charge set aside is not bar, §§9157, 9167; is bar §9159.

Does not apply to dismissals before trial, State v. Wickstrom 92 W. 503.

The above section supersedes former law providing bar—title of act sufficient—

implied repeal—information insufficient, no jeopardy—reversal on appeal not jeopardy, State v. George 84 W. 113.

"Proof" includes evidence disclosed to the prosecuting attorney on interviewing witnesses in preparing the case, State v. Poole, 64 W. 47.

Where information would not sustain a conviction it is not a bar, State v. Burns 54 W. 113.

## ACCUSED, RIGHTS OF, CODE 1881.

## RIGHTS OF PARTIES ACCUSED.

§9148. **How Accused Held.** §764. No person shall be held to answer in any court for an alleged crime or offense, unless upon an information filed by the prosecuting attorney, or upon an indictment by a grand jury, except in cases of misdemeanor before a justice of the peace, or before a court martial.

Rights of accused, later act, §9136.

Not necessary for state to reply to criminal defense, *State v. Lewis*, 31 W. 515.

§9149. **Court Must Be Competent.** §770.—7. No person charged with any offense against the law shall be punished for such offense, unless he shall have been duly and legally convicted thereof in a court having competent jurisdiction of the case and of the person.

§9150. **Benefit of Clergy.** §1171.—409. The plea of the benefit of clergy is abolished.

## ARRAIGNMENT.

## CHAPTER 85.

## OF THE ARRAIGNMENT OF THE DEFENDANT AND WITNESSES AND EVIDENCE.

§9151. **Arraignment.** §46. When the indictment or information has been filed, the defendant, if he has been arrested, or as soon thereafter as he may be, shall be arraigned thereon before the court.

Must be tried within sixty days, §9143.

*State v. Bodekar* 11 W. 417; *State v. Blanchard* 11 W. 116.

Motions and demurrer should be interposed upon plea of not guilty and not by objection to introduction of testimony,

Arraignment defined and in murder it can not be dispensed with, *Elick v. Territory* 1 W. T. 137.

§9152. **Defendant's Pleading.** §1045. In answer to the arraignment, the defendant may move to set aside the indictment or information, or he may demur or plead to it, and is entitled to one day after arraignment in which to answer thereto if he demand it.

Grounds of motion to set aside information, §9265; sufficiency of indictment or information, §9281.

Indictment or information must contain what, §9268.

§9153. **When Motion to Set Aside Must Be Sustained.** §1046.—284. The motion to set aside the indictment can be made by the defendant, on one or more of the following grounds, and must be sustained:

1. When it is not endorsed "a true bill," and the endorsement signed by the foreman of the grand jury as prescribed by this code.

2. When the names of all the witnesses examined before the grand jury are not endorsed thereon.

3. When it has not been presented and marked "filed," as prescribed by this code;

4. When any person, other than the grand jurors was present before the grand jury when the question was taken upon the finding of the indictment, or when any person, other than the grand jurors, was present before the grand jury during the investigation of the charge, except as required or permitted by law.

5. That the grand jury were not selected, drawn summoned, empaneled, or sworn as prescribed by law.

Motions to set aside information, §9265.

names drawn invalid, *State ex rel. Murphy v. Superior Court* 82 W. 284.

Grounds of demurrer, §9167.

Arbitrarily selecting grand jury from

Accused not a "witness," *State v. Kulbe*, 67 W. 21.

§9154. — **Exception.** §1047.—285. The ground of the motion to set aside the indictment mentioned in the fifth subdivision of the preceding section is not allowed to a defendant who has been held to answer before indictment.



**§9155. Motion Denied, Immediate Answer.** §1048. If the motion to set aside the indictment or information be denied, the defendant must immediately answer the indictment or information, either by demurring or pleading thereto. L. '91 46.

**§9156. Objection Sustained, Defendant to Be Held.** §1049. If the court direct that the case be resubmitted, the defendant, if already in custody, must so remain, unless he be admitted to bail; or if already admitted to bail, or money has been deposited instead thereof, the bail or money is answerable for the appearance of the defendant to answer a new indictment or information.

If demurrer sustained unless for facts showing defense it is error to discharge defendant, State v. Bodekar 11 W. 417.

**§9157. Charge Set Aside Is Not Bar.** §1050. An order to set aside the indictment or information as provided in this chapter shall be no bar to a future prosecution for the same offense.

Acquittal when a bar, §9147.

Judgment on verdict is bar, §9166.

**§9158. Grounds of Demurrer.** §1051. The defendant may demur to the indictment or information when it appears upon its face either;

1. That it does not substantially conform to the requirements of this code.

2. More than one crime is charged.

3. That the facts charged do not constitute a crime.

4. That the indictment or information contains any matter which if true would constitute a defense or other legal bar to the action.

Grounds of motion to set aside—indictment, §9153; information, §9265.

**§9159. When Judgment on Demurrer Bar.** §1052. If the demurrer is sustained because the indictment or information contains matter which is a legal defense or bar to the action, the judgment shall be final, and the defendant must be discharged.

When judgment on demurrer is not bar, §9158.

**§9160. Demurrer Overruled—Procedure.** §1053.—291. If the demurrer is overruled the defendant has a right to put in a plea. If he fails to do so, judgment may be rendered against him on the demurrer, and, if necessary, a jury may be impaneled to inquire and ascertain the degree of the offense.

**§9161. Pleas.** §1054. There are but three pleas to the indictment or information. A plea of,

1. Guilty.

2. Not guilty.

3. A former judgment of conviction or acquittal of the offense charged, which may be pleaded with or without the plea of not guilty.

Denial of separate pleas of not guilty assigned is cured by vacating plea and allowing demurrer, State v. Boyce 24 W. 514. Elliott, 69 W. 62.

No reply necessary to plea of former acquittal, State v. Lewis 31 W. 515.

Failure to enter plea is not reversible error and can not be raised in first instance in the Supreme Court—plea entered by nunc pro tunc order, State v. Costello 29 W. 366.

Trial without plea is reversible error, Palmer v. United States 1 W. T. 6.

Error in requiring plea before counsel

**§9162. Forms of Entry of Pleas.** §1055. The plea may be entered on the record, substantially, in the following form:

1. A plea of guilty: The defendant pleads that he is guilty of the offense charged in the indictment (or information as the case may be).

2. A plea of not guilty: The defendant pleads that he is not guilty of the offense charged in the indictment (or information as the case may be).

3. A plea of former conviction or acquittal: The defendant pleads that he has formerly been convicted (or acquitted, as the case may be) of the offense charged in the indictment (or information, as the case may be), by the judgment of the court of (naming it), rendered on the \_\_\_\_\_ day of \_\_\_\_\_, A. D. 18\_\_\_\_ (naming the time).

Change of name in new indictment after Nor is new indictment under different acquittal, not ground for plea of former statute for same offense, *State v. Reiff* Jeopardy, *State v. Friedrich*, 4 W. 204. 14 W. 664.

Cited 84 W. 113.

§9163. **Plea of Guilty Only in Person.** §1056.—294. The plea of guilty can only be put in by the defendant himself in open court.

In misdemeanors punishable by fine only Plea is personal and "not guilty" can defendant may appear by counsel, §9173. not be entered by attorney, *Elick v. Territory* 1 W. T. 137.

§9164. **Withdrawal of Plea.** §1057.—295. At any time before judgment, the court may permit the plea of guilty to be withdrawn, and other plea or pleas substituted.

Substitution should be permitted where plea entered under promises and communication with friends prevented, *State v. Allen*, 41 W. 63.

Mandamus will not lie to compel superior court to pronounce judgment on plea of guilty, *State ex Lundin v. Court* 102 W. 600.

Motion after judgment is application to vacate judgment and showing of irregularity must be clear, *State v. Scott* 101 W. 199.

Allowance of withdrawal discretionary—properly refused when defendant claimed promised immunity which was denied, *State v. Cimini* 53 W. 268.

§9165. **Plea of Not Guilty Is General Denial.** §1058. The plea of not guilty is a denial of every material allegation in the indictment or information; and all matters of fact may be given in evidence under it, except a former conviction or acquittal.

**Judgment on Verdict Is Bar.** §1059. Repealed by §9147.

Foreign acquittal or in another county §9378.

a bar, §8706.

Information or indictment set aside is not bar, §9157.

§9345.

Judgment on demurrer is bar, §9159.

Acquittal by judgment on defective information a bar, *State v. Burns* 54 W. 113.

Acquittal when a bar, §9147.

Crime committed between two dates and in two counties venue is either county,

Discharge of defendant to give testimony for state or co-defendant is bar, *State v. Hazzard* 75 W. 5.

§9167. **Technical Defect Not Bar.** §1060. The judgment for the defendant on a demurrer to the indictment or information, except where it is otherwise provided, or for an objection taken at the trial to its form or substance, or for variance between the indictment or information and the proof, shall not bar another prosecution for the same offense.

§9168. **Defendant's Refusal, Plea of Not Guilty Entered.** §1061. If the defendant fail or refuse to answer the indictment or information by demurrer or plea, a plea of not guilty must be entered by the court.

§9169. **Plea of Guilty, When Jury to be Called.** §1062.—300. If, on the arraignment of any person, he shall plead guilty, if the offense charged be not murder, the court shall, in their discretion, hear testimony, and determine the amount and kind of punishment to be inflicted; but if the defendant plead guilty to a charge of murder, a jury shall be empaneled to hear testimony, and determine the degree of murder, and the punishment therefor.

§9170. **When Counsel to be Assigned.** §1063.—301. If the defendant appear without counsel, he shall be informed by the court that it is his right to have counsel, before being arraigned and he shall be asked if he desire the aid of counsel, and if it appear that he is unable to employ counsel by reason of poverty, counsel shall be assigned to him, by the court.

Attorney assigned must act and can not collect fees from county, *Presby v. Klickitat County* 5 W. 329.

Defendant was not advised of his rights, was induced to plead guilty and was sentenced without jury trial held error, *State v. Allen* 41 W. 63.

§9171. **True Name of Defendant to be Ascertained.** §1064. When the defendant is arraigned he shall be interrogated, if the name by which he is indicted be not his true name; he shall then declare his true name, or be proceeded against by the name in the indictment or information.

Indictment or information by fictitious or erroneous name, §9271.

§9172. **True Name to Be Entered.** §1065. If he allege that another name is his true name it must be entered in the minutes of the court, and the subsequent proceedings on the indictment or information may be had against him by that name, referring also to the name by which he is indicted or informed against.



**§9173. Appearance by Counsel in Misdemeanors.** §1066. If the indictment or information be for a misdemeanor punishable by fine only, the defendant may appear upon arraignment by counsel.

Plea of guilty entered in person only, preme court, §9311.

§9163.

At trial security must be given or defendant must appear, §9373.

Personal appearance not necessary in su-

## ARRESTS AND BAIL.

Animals, cruelty to §§1957, 1967.

Appeal, bail to be fixed §7331.

Arrest and bail in civil procedure §7350;

Justices courts §9410.

Arrests under motor vehicle act §228;

weights and measures act §7258.

Coroner, warrant by §1746.

Fire wardens without warrant §2576.

Information or indictment, arrest on §9261

Justices of the peace, powers §9434.

Telegraph, warrants by §7793.

Witnesses must be subpoenaed §9215.

## OF PROCEEDINGS BEFORE TRIAL.

**§9174. Arrest of Defendant.** §1026. When an indictment is found or an information filed, the court may direct the clerk to issue a warrant for the arrest of the defendant, returnable forthwith; if no order is made, the clerk must issue a warrant within ten days after the indictment is returned into court or the information filed.

At the time of issuing warrant clerk shall vern 32 W. 7.  
subpoena witnesses, §9215.

Defendant answering without arrest on bond liable if no reasonable ground, Gree-  
warrant gives jurisdiction, State v. Mel- nius v. American Surety Co. 92 W. 401.

**§9175. To Whom Process Directed.** §1027.—265. All criminal process issuing out of the superior court, shall be directed to the sheriff of the county in which it is to be served, and be by him executed according to law. When there is no sheriff of a county, or he is disqualified from any cause from discharging any particular duty, it shall be lawful, for the officer or person commanding or desiring the discharge of that duty to appoint some suitable person, a citizen of the county to execute the same: Provided, That final process shall in no case be executed by any other person than the legally authorized officer, or in case he is disqualified, some suitable person appointed by the court or judge thereof out of which the process issues, who shall make such appointment in writing, and before such appointment shall take effect, the person so appointed shall give surety to the party interested, for the faithful performance of his duties, which bonds of suretyship shall be in writing and approved by the court or judge making the appointment, and be placed on file with the papers in the case.

Guards for prisoners §9208.

**§9176. Breaking Building to Make Arrest.** §1170.—408. To make an arrest in criminal actions, the officer may break open any outer or inner door, or windows of a dwelling house, or other building, or any other enclosure, if after notice of his office and purpose he be refused admittance.

**§9177. Bail Must Be Indorsed on Warrant.** §1028. The court must, at the time of directing the clerk to issue the warrant, fix the amount in which persons charged by indictment are to be held to bail, and the clerk must indorse the amount on the warrant. If no order fixing the amount of bail has been made, the sheriff may present the warrant to the judge of the court, and such judge must thereon indorse the amount of the bail to be required; or if there is no such judge in the county, the clerk may fix the amount of bail.

Allowance of bail §9141.

**§9178. Officer Must Show Authority.** §1030. The officer making an arrest must inform the defendant that he acts under authority of a warrant, and must also show the warrant if required.

**§9179. Accused Resisting Arrest.** §1031.—269. If after notice of the intention to arrest the defendant, he either flee or forcibly resist, the officer may use all necessary means to effect the arrest.

**§9180. Escape—Recapture. §1032.—270.** If a person arrested escape or be rescued, the person from whose custody he made his escape or was rescued, may immediately pursue and retake him at any time, and within any place in the state. To retake the person escaping, or rescued, the person pursuing has the same power to command assistance as given in cases of arrest.

**§9181. Recognizance in Open Court. §1033.—271.** Recognizances in criminal proceedings may be taken in open court and entered on the order book.

Security for fine given at trial must be stance, §§7431, 9350.  
in writing, §9373.

Action on forfeited recognizance, §9347.

No bond to fail for want of form or sub- Forfeiture of recognizance and bench warrant in case of failure to appear, §9310.

**§9182. Arresting Officer May Take Recognizance. §1034.—272.** Any officer authorized to execute a warrant in a criminal action, may take the recognizance and justify and approve the bail; he may administer an oath and examine the bail as to its sufficiency.

Bail shall justify as in civil cases, §9185. In civil procedure every court or officer may examine surety, §7369.

**§9183. Report and Record of Recognizances. §1035.—273.** Every recognizance taken by any peace officer must be certified by him forthwith to the clerk of the court to which the defendant is recognized. The clerk must thereupon record the recognizance in the order book, and from the time of filing it has the same effect as if taken in open court.

**§9184. Money Bail. §1036.—274.** The defendant may, in the place of giving bail, deposit with the clerk of the court to which he is held to answer, the sum of money mentioned in the order, and upon delivering to the sheriff the certificate of deposit, he must be discharged from custody.

Money bail in civil cases, §7372.

depositing it rather than defendant, Mc-

Money presumptively belongs to person Almond v. Bevington 23 W. 315.

**§9185. Justification of Bail. §1169.—407.** Bail shall, when required, justify as in civil cases.

Qualification and justification in civil cases, §7365; officer authorized to execute warrant may justify bail, §9182.

**§9186. Forfeiture of Recognizance. §1037.—275.** If without sufficient excuse, the defendant neglect to appear for trial or judgment, or upon any other occasion when his presence in court may [be] lawfully required, according to the condition of his recognizance, the court must direct the default to be entered upon its minutes, and the recognizance of bail, or money deposited as bail, as the case may be, is [t]hereupon forfeited.

**§9187. Copies and List of Witnesses in Capital Cases. §1038.** As soon as may be after the finding of an indictment or the filing of an information for a capital crime, the party charged shall be served with a copy thereof, by the sheriff or his deputy, at least twenty-four hours before trial, and shall, on demand upon the clerk, by himself or counsel, have a list of the petit jurors returned delivered to him at least twenty-four hours before trial, and shall also have process to summon such witnesses as are necessary to his defense, at the expense of the county. L. '91 46.

Jurors may be selected from others than proceeding, State v. Quinn 56 W. 295.

list and before list exhausted, State v. Copies are a privilege and waived by Mayo 42 W. 540.

Copy is a privilege and is waived by proceeding in case, State v. Newcomb 58 W. 414.

**§9188. Copies—Fees. §1039.** Every person indicted or informed against for an offense for which he may be imprisoned in the penitentiary, if he be under recognizance or in custody to answer for such offense, he or his attorney shall be furnished with a copy of the indictment or information and of all indorsements thereof without paying any fees therefor. L. '91 46.

**§9189. Compounding Misdemeanors. §1040.—278.** When a defendant is prosecuted in a criminal action for a misdemeanor, for which the person injured by the act constituting the offense has a remedy by a civil action,



the offense may be compromised as provided in the next section, except when it was committed:

1. By or upon an officer while in the execution of the duties of his office.

2. Riotously: or,

3. With an intent to commit a felony.

Crimes cannot be compounded §9191.

mitting magistrate, §9611.

Compounding crimes, act '09, §8782.

Justice of the peace may compel the in-

Compounding misdemeanor before com-

jured person to appear by attachment, §9440.

§9190. — Procedure—Bar. §1041. In such case, if the party injured appear in the court in which the cause is pending at any time before the final judgment therein, and acknowledge in writing that he has received satisfaction for the injury, the court may, in its discretion, on payment of the costs incurred, order all proceedings to be discontinued and the defendant to be discharged. The reasons for making the order must be set forth therein and entered in the minutes. Such order is a bar to another prosecution for the same offense. L. '91 46.

§9191. Crimes Not to Be Compounded. §1043. No offense can be compromised, nor can any proceedings for the prosecution or punishment thereof be stayed upon a compromise, except as provided in this chapter. L. '91 46.

§9192. Custody of Prisoners—Expense. §1165.—403. All prisoners whom it may be necessary to convey to the place where the superior court is held or to any place for an examination before the judge, if conveyed beyond the bounds of the county in which they are confined, shall be conveyed to and from their place of confinement, by the sheriff of the county in which they are confined, or the sheriff of the county to which such prisoner belongs, at the expense, in the first instance, of the county to which such prisoner belongs; and such sheriff shall have a right to the custody of the prisoner within the limits of any county in this state through which he may pass; and for the temporary confinement of his prisoner, may use the county [jail of any county free of charge, except for board, which shall not exceed thirty cents a meal.]

Maximum allowance for board of prisoners, §3419.

## CONSTRUCTION.

Criminal code, 1909, construction of §8733. Person defined §9276. Number and gender §9277.

§9193. Construction of Act. §1292.—531. The provisions of this act so far as they are substantially the same as existing statutes must be construed as continuations thereof and not as new enactments.

Construction of entire code of 1881 and former laws, §1351.

code 1881 as a criminal code considered—re-enactments and repeals, In re Donnellan

Re-enactments as continuations—later section, §9197.

49 W. 460.

Validity of Sunday theater closing and

State law on gambling does not supersede ordinance, Seattle v. MacDonald 47 W. 298.

§9194. Limitation of Actions. §1294.—533. When a limitation or period of time prescribed in any existing statute for acquiring a right or barring a remedy has begun to run before this act takes effect, and the same or any limitation is prescribed in this act, the time which has already run shall be deemed part of the time, prescribed as such limitation by this act.

§9195. Act Is Measure of the Law. §1295.—534. No statute, law, or rule is continued in force because it is consistent with the provisions of this act, on the same subject, but in all cases provided for by this act, all statutes, laws, and rules, heretofore in force in this state, whether consistent or not, with the provisions of this act, unless expressly continued in force by it, are repealed and abrogated.

**§9196. Repeal Does Not Revive Former Law.** §1296.—535. This repeal, or abrogation, does not revive any former law heretofore repealed, nor does it affect any right already existing or accrued, or any action or proceeding already taken, except as in this act provided; nor does it repeal any private statute not expressly repealed.

**§9197. Law of 1891 Is Continuation of Former Law.** §46. All acts and parts of acts in force at the time of the passage of this act, relating to the same subject are continued in force so far as not repugnant to the provisions of this act, and the provisions of this act so far as they are the same as those of acts and parts of acts upon the same subject in force at the time of the passage hereof, are to be construed as continuations of such provisions.

• • • L. '91 119. Territorial laws in force §9260. Former section, §9193.

**Supplementary—AN ACT** providing a general savings clause and savings provisions in case of the repeal or amendment of criminal or penal statutes and declaring an emergency. Approved June 13, 1901. Laws '01. Ex. Sess. p 13.

**§9198. Construction of Criminal Statutes.** §1. No offense committed and no penalty or forfeiture incurred previous to the time when any statutory provision shall be repealed, whether such repeal be express or implied, shall be affected by such repeal, unless a contrary intention is expressly declared in the repealing act, and no prosecution for any offense, or for the recovery of any penalty or forfeiture, pending at the time any statutory provision shall be repealed, whether such repeal be express or implied, shall be affected by such repeal, but the same shall proceed in all respects, as if such provision had not been repealed, unless a contrary intention is expressly declared in the repealing act. Whenever any criminal or penal statute shall be amended or repealed, all offenses committed or penalties or forfeitures incurred while it was in force shall be punished or enforced as if it were in force, notwithstanding such amendment or repeal, unless a contrary intention is expressly declared in the amendatory or repealing act, and every such amendatory or repealing statute shall be so construed as to save all criminal and penal proceedings, and proceedings to recover forfeitures, pending at the time of its enactment, unless a contrary intention is expressly declared therein.

Act saves pending prosecutions under State v. Newcomb 58 W. 414.  
acts repealed, State v. Hanover 55 W. 403. Act valid—legislative action not re-  
Act saved laws prior to penal code, stricted to purpose declared in proclama-  
tion, State v. Fair 35 W. 127.

## CORPORATIONS.

**AN ACT** relating to procedure in criminal actions against corporations. Approved February 28, 1911. Laws '11 p 106.

**§9199. Corporation Indicted—Procedure.** §1. Whenever an indictment or information shall be filed in any superior court against a corporation charging it with the commission of a crime, a summons shall be issued by the clerk of such court, signed by one of the judges thereof, commanding the sheriff forthwith to notify the accused thereof, and commanding it to appear before such court at such time as shall be specified in said summons. Such summons and a copy of the indictment or information shall be at once delivered by such clerk to said sheriff and by him forthwith served and returned in the manner provided for service of summons upon such corporation in a civil action. Whenever a complaint against a corporation, charging it with the commission of a crime, shall be made before any justice of the peace or municipal judge, a like summons, signed by such justice of the peace or municipal judge, shall be issued, which, together with a copy of said complaint, shall be delivered to the sheriff at once and by him forthwith served as herein provided.

**§9200. Appearance.** §2. Upon such service being made such corporation shall appear at the time designated, by one of its officers or by counsel;



and upon such appearance, and thereafter, the same course shall be pursued, as nearly as may be, as upon the appearance of an individual to indictment, information or complaint and warrant charging him with the same offense. Upon failure of the corporation to make such appearance said court shall cause to be entered a plea of "not guilty," and upon appearance made or plea entered the corporation shall be deemed forthwith continuously present in court until the case shall be finally disposed of.

§9201. Judgment. §3. If the corporation shall be found guilty and a fine imposed, it shall be entered and docketed by the clerk, or justice of the peace or municipal judge as a judgment against the corporation, and it shall be of the same force and effect and be enforced against such corporation in the same manner as a judgment in a civil action.

## COSTS.

Civil cases §7456; schedule of fees, county, etc., officers §7477.

§9202. Defendant Discharged Not Liable for Costs. §1168.—406. No prisoner or person under recognizance who shall be acquitted by verdict, or discharged because no indictment is found against him, or for want of prosecution, shall be liable for any costs or fees of any officer or for any charge of subsistence while he was in custody but in every such case the fees of the defendant's witnesses, and of the officers for services rendered at the request of the defendant; and charges for subsistence of the defendant while in custody shall be taxed and paid as other costs and charges in such cases.

No costs on acquittal, but chargeable to complainant or county, §9203.

City is liable for costs if defendant is acquitted on charge under ordinance, *Spokane v. Smith* 37 W. 583.

Supplementary—AN ACT to establish the amount and provide for the payment of Costs in Certain Cases. Approved December 7, 1981. C81 §2103-12.

§9203. Costs. §2103.—1. That when any person shall be brought before a court, justice of the peace, or other committing magistrate of any county, city or town in this state, having jurisdiction of the alleged offense, charged with the commission of a crime or misdemeanor, and such complaint upon examination shall appear to be unfounded, no costs shall be payable by such acquitted party, but the same shall be chargeable to the county, city or town for or in which the said complaint is triable. But if the court, justice of the peace or other magistrate trying said charge shall decide that the complaint was frivolous or malicious, the judgment or verdict shall also designate who is the complainant, and may adjudge that said complainant pay the costs. In such cases a judgment shall thereupon be entered for the costs against said complainant, who shall stand committed until such costs be paid or discharged by due process of law.

No costs against defendant on acquittal in any case, §9202.

peace bond, §9574.

Public officers not allowed fees in public cases, §7500.

Complainant liable in peace bond, when, §9573.

Witnesses to report time, jurors to verify mileage, §7499.

Commitment where complaint frivolous is due process of law and is not imprisonment for debt, *Colby v. Backus* 19 W. 347.

Against complainant before committing magistrate, §9601.

Only magistrates can tax costs to complaining witness if complaint malicious, *Town of Ilwaco v. Miller* 8. W. 449.

Before committing magistrate certified up and abide final determination of case, §9613.

Jury on acquittal of defendant cannot find complaint malicious, *In re Permstick* 3 W. 672.

Commitment of defendant for costs on

§9204. — Finding of Grand Jury. §2104.—2. When a grand jury upon a complaint submitted to them for investigation fail to find a bill of indictment for an offense against the laws of the state, they shall also inquire whether the complaint is frivolous or malicious, and decide whether the county or complainant shall pay the costs, and make return of their finding in open court. Any complainant adjudged by said grand jury as liable for the costs, shall forthwith be brought into court and sentenced to pay the same or stand committed until such judgment is satisfied or complied with.

§9205. — **Jury Fee.** §2105.—3. Every person convicted of a crime or held to bail to keep the peace, shall be liable to all the costs of the proceedings against him, including, when tried by a jury in the superior court, twelve dollars for a jury fee, and when tried by a jury before a committing magistrate, six dollars for jury fee, for which judgment shall be rendered and collection had as in cases of fines. The jury fee, when collected for a case tried by the superior court, shall be paid to the clerk, to be by him applied as the jury fee in civil cases is applied.

Jury, clerk's and sheriff's fees chargeable, *State v. Armstrong* 29 W. 57.

**Amendatory—AN ACT to amend Sections 2106 and 2107 of the Code of Washington. Costs in certain cases. Approved November 28, 1883. Laws '83 p 35.**

§9206. **Cost Bills.** §2106. In all convictions for felony, whether capital or punishable by imprisonment in the penitentiary, the clerk of the superior court shall forthwith, after sentence, tax the costs in the case. The cost bill shall be made out in triplicate, and be examined by the prosecuting attorney of the county in which the trial was had. After which the judge of the superior court shall allow and approve such bill or so much thereof as is allowable by law. The clerk of the superior court shall thereupon, under his hand, and the seal of the court, certify said triplicate cost bills, and shall file one with the papers of the cause and shall transmit one to the state auditor and one to the county auditor of the county in which said felony was committed. L. '83 35

Duty of prosecuting attorney to retax cost bills, §1795. court may pass on items, *State ex rel. Carraher v. Graves* 13 W. 485.

Prosecuting attorney should not strike out items but report disallowance that the Costs chargeable to the state, *State ex rel. Thurston County v. Grimes* 7 W. 445.

§9207. **Payment of Costs.** §2107. Upon the receipt of the cost bill, as provided for in the preceding section, the county auditor shall draw warrants for the amounts due each person, as certified in said cost bill, which warrants shall be paid as other county warrants are paid. On receipt of the certified copy of said cost bill, the state auditor shall examine and audit said bill and allow the same or so much thereof as may be allowable against the state, and shall credit the amount so allowed to the county from whence the bill came as so much state tax paid. The state auditor shall immediately notify the state treasurer and county auditor each of whom shall credit and charge accordingly. L. '83 35.

§9208. **Guards for Prisoners.** §2108.—6. In the necessary and actual transportation of prisoners to await or attend trial, the sheriff may employ necessary guards, not to exceed one for each prisoner. Said guards shall be allowed two dollars per day and mileage. The sheriff shall be allowed in conveying prisoners to and from the county to the place of trial, or to and from the place of confinement the mileage of officer, guard or guards, and prisoner or prisoners, or else the actual expenses incurred.

§9209. **Costs on Account of Other Counties.** §2109.—7. Whenever a juror, witness or officer is required to attend a court, or travel on official business out of the limits of his own county, and entitled to mileage, in lieu thereof, he may at his option receive his actual and necessary traveling expenses by the usually traveled route in going to and returning from the place where the court is held, or where the business is discharged. At the close of each term of the superior court, the clerk shall ascertain the amount due each juror for his mileage and per diem; and he shall also certify the amount of fees that may be due to the sheriff of any other county than that in which the court is held, who may have attended the term, having a prisoner in custody charged with or convicted of a crime, or for the purpose of conveying such prisoner to or from the county, which, when approved by the court, or judge, shall be a charge upon the county to which the prisoner belongs; and he shall also certify the amount which may be due witnesses attending from another county in a criminal case for their fees, which, when, approved by the court or judge, shall be a charge upon the county to which the case belongs.



§9210. **Items Chargeable.** §2110.—8. Each county shall be liable to pay the per diem and mileage, or other compensation in lieu thereof, to jurors of the county attending the superior court; the fees of the sheriff for maintaining prisoners charged with crimes, and his costs in conveying them to and from the superior court, as well as their board while there; the per diem and mileage, or such other compensation as is allowed in lieu thereof, of the sheriff of the county, when in criminal cases he is required to attend or travel to the superior court out of the limits of his own county; the costs in criminal cases taken from the county to the superior court: Provided, That none shall be so paid by the treasurer unless the particular items shall be approved by the judge and certified by the clerk under the seal of the court: And, provided further, That for the time or travel which may be paid by the parties or United States, no payment from the county fund shall be allowed, and no officer, juror or witness shall receive from the county double pay as a per diem for the same time, or as traveling expenses or mileage for the same travel, in how many different capacities, or in however many different causes they may be summoned, notified or called upon to testify or attend in. Territorial section. "United States" should read "state."

§9211. **Court House, Jails and Incidentals.** §2111.—9. The county in which the court is held shall furnish the court house, a jail or suitable place for confining prisoners, books for record, stationery, lights, wood, attendance and other incidental expenses of the court house and court. • • •

§9212. **Costs Belong to County.** §2112.—10. All costs collected against any person convicted of crime or misdemeanor, and all sums collected on recognizances of persons accused, or of witnesses in criminal cases, for fines and forfeitures, shall belong to the county from which the case came.

All fines and forfeitures belong to county, §§9305, 9332.

## DOCKET.

### CHAPTER 84.

#### OF THE DOCKET.

§9213. **Contents of Docket.** §1044. The clerk shall, in preparing the docket of criminal cases, enumerate the indictments and informations pending according to the date of their filing, specifying opposite to the title of each action whether it be for a felony or misdemeanor, and whether the defendant be in custody or on bail, and shall, in like manner, enter therein all indictments and informations on which issues of fact are joined, all cases brought to the court on change of venue from other counties, and all cases pending upon appeal from inferior courts. L. '91 46.

## EVIDENCE.

§9214. **Witnesses—Compelling Attendance—Detention in Custody—Per Diem—Accused as Witness.** §1067. Witnesses may be compelled to attend and testify before the grand jury; and witnesses on behalf of the state, or of the defendant, in a criminal prosecution, may be compelled to attend and testify in open court, if they have been subpoenaed, without their fees being first paid or tendered, unless otherwise provided by law; the court may, upon the motion of the prosecuting attorney, recognize witnesses, with or without sureties, to attend and testify at any hearing or trial in any criminal prosecution in any court of this state, or before the grand jury, and in default of such recognizance the court may direct that such witness shall be detained in the custody of the sheriff until the hearing or trial of the prosecution in which such testimony may be required: Provided, however, That each witness so detained by order of court pursuant to the provisions of this section, shall be paid, in addition to witness fees for actual attendance in court, the sum of one dollar per day for time actually detained in custody, and shall be furnished food and lodging while so detained, and any person accused of any crime in this state, by indictment,

information, or otherwise, may, in the examination or trial of the cause, offer himself, or herself, as a witness in his or her own behalf, and shall be allowed to testify as other witnesses in such case, and when accused shall so testify, he or she shall be subject to all the rules of law relating to cross-examination of other witnesses: Provided, That nothing in this code shall be construed to compel such accused person to offer himself or herself as a witness in such case: And provided further, That it shall be the duty of the court to instruct the jury that no inference of guilt shall arise against the accused if the accused shall fail or refuse to testify as a witness in his or her own behalf. L. '15 260. R.&B. §2148.

Prosecuting attorney's remark on defendant's failure to testify cured by instruction of court. State v. Raub 103 W. 214.

Witnesses must report to clerk daily §7499.

Cannot be prosecuted on incriminating testimony §§8726, 9219.

Discharge of defendant to give evidence for state or co-defendant, §9378.

Attendance of witnesses in civil actions, §7759.

Recognizance of witnesses in change of venue, §9400.

Accused may be asked if ever convicted before, State v. Brownlow 89 W. 582.

Failure to instruct is error, State v. Hanes 84 W. 601; Contra State v. Ross 85 W. 218; former case affirmed, State v. Gustafson 87 W. 613.

Accused testifying is subject to all the rules of cross-examination, State v. Brooks 89 W. 427.

Defendant's credibility may be attacked, State v. Peeples, 71 W.

Comment on failure to explain evidence is not comment on failure of defendant to testify, State v. Smokalem 37 W. 91.

It is error to not instruct of court's own motion against inference of guilt where defendant is not a witness, Linbeck v. State 1 W. 336; State v. Myers 8 W. 177.

Proof of former conviction of similar offense to affect credibility done in improper manner also proof of another crime not interwoven was error, State v. Gottfriedson 24 W. 398.

Instruction on failure to testify ap-

proved, State v. Mitchell 32 W. 64.

Though defendant offers himself as a witness he can not be compelled to criminate himself, State v. O'Hara 17 W. 525.

Defendant on charge of burglary testified that he had not solicited to plead guilty to larceny may be impeached as to such fact, State v. Burton 27 W. 528.

Defendant offered as a witness to certain points refused state may comment on failure to deny material facts, State v. Ulsemer 24 W. 657. In such case the instruction of the court that defendant's testimony is to be weighed as other witnesses is not error, id.

Interpreter subpoenaed will not render him incompetent State v. Michel 20 W. 162.

Court said "no inference of guilt should arise" instead of "shall arise," held not error, State v. Krug 12 W. 289.

Dying declaration of patient that he had been "butchered" by the doctors is admissible in charge of manslaughter, State v. Gile 8 W. 12.

When defendant is witness court may charge jury to consider "great interest" of defendant, State v. Nordstrom 7 W. 506.

Defendant may be cross-examined fully and questioned as to flight after crime, State v. Duncan 7 W. 336.

Witness may be asked if she is a prostitute unless she claims exemption because incriminating—witness' opinion of guilt—hearsay—threats to third party of killing. State v. Coella 3 W. 99.

Defendant as a witness is subject to rules of examination, Thompson v. Territory 1 W. T. 548.

§9215. When Warrant and Subpoenas Simultaneous—State's Continuance. §1068.—306. The clerk shall, at the time of issuing a warrant for the defendant, issue a subpoena for all the witnesses whose names are endorsed on the indictment and any others required; but in no case shall a continuance be granted to the state on account of the absence of any witnesses whose name is not endorsed on the indictment.

Warrant for accused §9177.

Continuance allowed defendant when, §9361.

This section is in force as to issuance of subpoenas and it seems would apply to continuances under informations, §9260.

§9216. Competency of Witnesses—Privilege. §1069.—307. Witnesses competent to testify in civil cases shall be competent in criminal prosecutions, but regular physicians or surgeons, clergymen or priests, shall be protected from testifying as to confessions, or information received from any defendant, by virtue of their profession and character. Indians shall be competent witnesses as hereinbefore provided, or in any prosecutions in which an Indian may be a defendant.

Defendant as states voluntary witness, §9378.

Proof of former conviction of witness is the judgment, State v. Payne 6 W. 563.

Conviction of misdemeanor can not be shown to affect credibility, id.

Although witness remains in court room against order of court defendant entitled to his testimony but fact may be commented on, State v. Lee Doon 7 W. 308.

Witness testifying to facts testified to by other deceased witness may identify



Substitute—AN ACT making it unlawful to injure or damage in any way the public lands of the state of Washington, and prescribing the punishment therefor. Approved March 6, 1899. Laws '99 p 47.

Former laws '90 p 124, '97 p 247.

**§9131-112. Trespass on State Lands.** §1. If any person shall cut down, destroy, injure, or cause to be cut down, destroyed or injured, any timber standing, growing or felled upon any of the lands of the state of Washington before deed shall have been issued by the state therefor as provided by law, or shall take or remove, or cause to be taken or removed from any such lands, any timber, wood, clay, sand or other material or substance thereon, or shall dig, quarry, take or remove any mineral (except by contract with the state), earth or stone from such lands, or shall cause to be dug, quarried, taken or removed any mineral (except by contract with the state) earth or stone from such lands, or shall otherwise injure, deface or damage, or shall cause to be injured, defaced or damaged any such lands, he shall be deemed guilty of a misdemeanor.

Civil liability of treble damages, §6435.

**§9131-113. Consent of State.** §2. That nothing in this act shall be so construed as to prevent any person, who shall lease said lands or hold the same under contract with the state for the purpose of a home, from cutting or occupying the same, for domestic use or to clear land for actual cultivation... lessee or contractor may sell such timber so cut in good faith for the purpose of clearing such land for cultivation: Provided further, however, That before any timber may be sold by any such lessee or contractor he must first obtain the written consent of the commissioner of public lands of the state of Washington to such sale; otherwise such lessee or contractor shall not have the benefit of the provisions of this section.

**§9131-114. Penalty.** §3. Any person or persons violating the provisions of this act shall be guilty of a misdemeanor and, upon conviction thereof, be punished by a fine of not less than twenty-five dollars nor more than one thousand dollars, or by imprisonment in the county jail of the county in which such conviction was had, for a time not less than one month and not more than one year, or by both fine and imprisonment.

Supplementary—AN ACT to punish the injury or destruction of property and records upon public lands. Approved March 13, 1899. Laws '99 p 186.

**§9131-115. Trespass on Public Lands.** §1. If any person shall maliciously or wantonly destroy or deface any cabin or other building or place of shelter or any of the contents of such cabin, building or shelter constructed by any person or persons or society of persons upon any public land of the state of Washington, or of the United States within the state of Washington, or upon any land not owned by such person so destroying or defacing the same, he shall be deemed guilty of a misdemeanor: Provided, That the provisions of this act shall not apply to bona fide settlers on government lands.

**§9131-116. Public Monuments and Records.** §2. If any person shall maliciously or wantonly remove, destroy or carry away any record or record book or document of any kind or any box or other receptacle for containing the same or any instrument or device for scientific purposes established or placed upon any mountain peak or summit or at any other place of resort, or upon any land belonging to this state or to the United States, or in or upon any body or stream of water within this state, such person shall be deemed guilty of a misdemeanor.

**§9131-117. Penalty.** §3. Every person convicted of a violation of any of the provisions of this act shall be punished by a fine of not less than ten dollars nor more than one hundred dollars or by imprisonment in the county jail not less than ten days nor more than six months or by both such fine and imprisonment. Any person acting as informer, in case of conviction under this act, shall be entitled to one-half of the fine imposed.

**VAGRANCY.**

§9131-121. Justices' Jurisdiction. §1272. Upon complaint made on oath to any justice of the peace against any person as being such vagrant within his local jurisdiction, as defined in the last preceding section, he shall issue a warrant for the arrest of such person, and the complaint, warrant arrest, and examination shall be governed by the provisions of this code relating to the examination and commitment for trial of persons charged with offenses, so far as the same may be applicable.

Vagrancy—criminal code, §9131.

§9131-122. Peace Officers Shall Arrest Vagrants. §1273.—512. All peace officers shall arrest any vagrant whom they may find at large, and take him before some justice of the peace, of the county, city, or town, in which the arrest is made.

**VENEREAL DISEASES.**

AN ACT to prohibit the advertising of treatment or cure of venereal diseases and disorders, declaring the same a misdemeanor and prescribing a penalty therefor. Approved March 6, 1905. Laws '05 p 142.

§9131-123. Venereal Diseases, Advertising Cure. §1. Any person who shall advertise that he will treat or cure venereal diseases or disorders, or any venereal disease or disorder, shall be guilty of a misdemeanor and upon conviction thereof shall be imprisoned in the County jail for a period of not less than one month nor more than six months. Any owner or managing officer of any newspaper in whose paper shall be printed or published such advertisement as is described in this act shall be guilty of a misdemeanor, and upon conviction thereof shall be imprisoned in the County jail for a period of not less than one month nor more than six months.

Advertising cures, later act §9022.

**CRIMINAL PROCEDURE**

ACCESSORIES §9132.

ACCUSED, RIGHTS OF §9136.

Appeals to supreme court §7290.

Appeal is stay §7330.

ARRAIGNMENT §9151.

ARREST AND BAIL §9174.

CONSTRUCTION §9193.

CORPORATIONS §9199.

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EVIDENCE §9214.

Fines all paid into current state school fund §5109.

FORMER CONVICTION §9221.

FUGITIVES §9225.

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INDICTMENT §9249.

INFORMATION §9257.

INDICTMENT AND INFORMATION §9266.

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RECOGNIZANCES §9347.

REWARDS §9352.

Roads, county prisoners to work on §5983.

Search Warrants §9357.

State Reformatories §6730.

Commitment, etc. §6739.

State training school, commitment to

§§4843, 8711; management, etc. §4841;

for girls §6769.

TRIALS §9361.

VENUE §9391.

**ACCESSORIES.****PARTIES TO CRIME.**

§9132. Accessories and Principals in Second Degree Are Principals. §956.—193. No distinction shall exist between an accessory before the fact and a principal, or between principals in the first and second degree, and all persons concerned in the commission of an offense, whether they directly counsel the act constituting the offense, or counsel, aid and abet in its commission, though not present, shall hereafter be indicted, tried and punished as principals.

Later law, §8695.

Must charge defendant as accessory if proof of being accessory alone is relied upon for conviction, State v. Beebe. 66 W.



463.

One charged with first degree murder as accessory before fact cannot be convicted of manslaughter when evidence shows he was not present at commission of crime, but merely conspired, *State v. Robinson*, 12 W. 349.

Being present at homicide, aiding and abetting, sustains second degree murder verdict, *State v. Robinson*, 12 W. 491.

Counseling and abetting manslaughter sustains verdict as principal *State v. McFadden*, 48 W. 259.

Accessory may be charged as principal

and shown by evidence to be accessory or principal in second degree, *State v. Webb* 20 W. 500.

Accessory cannot be informed against in some offenses as in rape or burglary in same words as if principal—purpose of statute stated, *State v. Gifford* 19 W. 464; *State v. Morgan* 21 W. 355.

Accessory before the fact is charged as a principal committing the crime, *State v. Golden* 11 W. 422.

Accessory may be charged as principal, *State v. White* 10 W. 611.

Cited 86 W. 276.

**§9133. Accessories After the Fact.** §957.—194. Every person not standing in the relation of husband or wife, parent or grand parent, child or grand child, brother or sister, by consanguinity, or affinity to the offender, who, after the commission of any felony, shall, harbor, conceal, or maintain, or assist any principal, felon, or accessory before the fact, or shall give the offender any other aid, knowing that he had committed a felony, or had been accessory thereto before the fact, with intent that he shall avoid or escape from detection. arrest, trial or punishment, shall be deemed accessory after the fact, and shall, on conviction thereof, be imprisoned in the county jail not more than one year or be fined in any sum not exceeding five hundred dollars.

Accessories, later act §8696.

**§9134. Accessory Punished Without Principal.** §958. Every person who shall become an accessory after the fact to any felony may be indicted, convicted and punished, whether the principal felon shall or shall not have been convicted previously, or shall or shall not be amenable to justice by any court having jurisdiction to try the principal felon. L. '91 46.

**§9135. Venue of Trial of Accessory.** §6. An accessory after the fact to a felony may be tried either in the county in which he shall have become an accessory, or in the county in which the felony shall have been committed. L. '91 46.

## ACCUSED, RIGHTS OF, ACT 1909.

### CHAPTER 2.—Rights of Accused.

**§9136. Right to Counsel.** §53. Whenever a defendant shall be arraigned upon the charge that he has committed any felony, and shall request the court to appoint counsel to assist in his defense, and shall by his own oath or such other proof as may be required satisfy the court that he is unable, by reason of poverty, to procure counsel, the court shall appoint counsel, not exceeding two, for such defendant, to be paid upon its order by the county in which such proceeding is had, compensation not exceeding ten dollars per day for each counsel, for the number of days such counsel is actually employed in court upon the trial. Minn. C. '05 §4789.

Work cannot be required before conviction §3424.

Grand jury, accused not entitled to appear before §9245.

Constitutional rights, Const., art. 1, §20; former laws not repealed, §9148.

Accused, how held—court must be competent, §9148.

Five days including time held before committing magistrate, *State v. Humason* 5 W. 499; repealed as Bal. Code §§6926, 8739.

Right to counsel and witnesses face to face, Const., art. 1, §22, §9170.

Officer executing warrant may take bail §9182.

Officer must show warrant and inform defendant that he acts under its authority §9178.

Right to be tried separately if several defendants, §9377.

Right to compound misdemeanor 135 §9189.

Right to jury list, witnesses and copy of indictment or information without fees §9187.

Right to one day to plead, §9152.

Prisoner acquitted is not chargeable with any costs whatever, §9202.

Grounds upon which information must be set aside, §9265; indictment, §9253.

**§9137. Witnesses Face to Face.** §54. Every person accused of crime shall have the right to meet the witnesses produced against him face to face: Provided, That whenever any witness whose deposition shall have been taken

pursuant to law by a magistrate, in the presence of the defendant and his counsel, shall be absent, and cannot be found when required to testify upon any trial or hearing, so much of such deposition as the court shall deem admissible and competent shall be admitted and read as evidence in such case.

Constitution provides for witnesses "face to face, Const., art. 1. §22.

**§9138. Right to Subpoena. §55.** Every person charged with the commission of a crime shall have the right upon the trial of such charge to be heard in person or by counsel, and to produce witnesses and proofs in his favor and to have compulsory process to compel the attendance of all witnesses who may be necessary for his proper defense.

Constitution provides evidence, Const., Order of court must be had for witnesses, art. 1, §22. State ex rel. Carraher v. Graves 13 W. 485.

**§9139. Presumption of Innocence—Conviction Lowest Degree. §50.** Every person charged with the commission of a crime shall be presumed innocent until the contrary is proved by competent evidence beyond a reasonable doubt; and when an offense has been proved against him, and there exists a reasonable doubt as to which of two or more degrees he is guilty, he shall be convicted only of the lowest. Minn. C.'05 §4784.

~~Justice's jurisdiction, §9139.~~

Jury to determine degree, §§8698, 9383.

Degree of proof applies only to facts constituting crime and not evidentiary facts, 37 Minn. 493, 35 N. W. 373; 29 Minn. 193, 12 N. W. 524; 90 Minn. 183, 96 N. W. 330.

"Reasonable doubt" defined, 56 Minn. 226, 239, 55 N. W. 652, 57 N. W. 1065;

should be defined by the court only on request of jury, 38 Minn. 438, 38 N. W. 355; 14 Minn. 105, Gil. 75.

Definitions considered, 10 Minn. 407, Gil. 325; 12 Minn. 293, Gil. 191; 14 Minn. 105, Gil. 75; 18 Minn. 208, Gil. 191; 35 N. W. 373; 38 N. W. 355; 75 N. W. 235; 96 N. W. 330; 101 N. W. 499.

Cited 228 Fed. 980.

**§9140. Conviction, Only on Confession or Verdict. §57.** No person informed against or indicted for a crime shall be convicted thereof, unless by admitting the truth of the charge in his plea, by confession in open court, or by the verdict of a jury, accepted and recorded by the court. Minn. C.'05 §4785.

Confession as evidence, §9398.

Does not apply in case of refusal to plead,

Court may not direct verdict of guilty, State v. Harding 20 W. 556.

State v. Holmes, 68 W. 7.

**§9141. Bail, When Allowable. §58.** Every person charged with an offense, except that of murder in the first degree where the proof is evident or the presumption great, may be bailed by sufficient sureties, and bail shall justify and have the same rights as in civil cases, except as otherwise provided by law. The amount of bail in each case shall be determined by the court in its discretion and may from time to time be increased or decreased as circumstances may justify.

Bail must be indorsed on warrant, §9147.

Surety on bail bond in U. S. district court has contribution against co-surety, Belond v. Guy 20 W. 160.

When bail allowed, Const., art. 1, §20; shall not be excessive, Const., art. 1, §14.

**§9142. Proceedings Within Thirty Days. §59.** Whenever a person has been held to answer to any criminal charge, if an indictment be not found or information filed against him within thirty days, the court shall order the prosecution to be dismissed, unless good cause to the contrary be shown.

Defendant must act before information filed, State v. Lorenzy 59 W. 308.

called to plead—is not bar, State v. Seright 48 W. 307.

Request of counsel of accused excuse for delay, State v. Fletcher 50 W. 303.

Information not filed, defendant must be dismissed and bail bond released, State v. Lewis 35 W. 261.

Objection must be made when accused

**§9143. Trial Within Sixty Days. §60.** If a defendant indicted or informed against for an offense, whose trial has not been postponed upon his own application, be not brought to trial within sixty days after the indictment is found or the information filed, the court shall order it to be dismissed, unless good cause to the contrary is shown.

Trial in five days not jurisdictional under L. '91 64, §90, unless timely objection is made, State v. Macleod 78 W. 175. Sec-

tion repealed, L. '09 906.

State may appeal from judgment of dismissal, State v. Miller 82 W. 477.

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refusal to dismiss presumed sufficient if no showing, State v. Clay 100 W. 417.



Prisoner released on habeas corpus after sixty days, State ex rel. Shattuck v. French 82 W. 330.

Statute satisfied if first trial within sixty days, hence in appeal from justice's court defendant cannot invoke the statute, State v. Jones 80 W. 335.

Continuance within time properly granted the state for absent witness, State v. Grune 72 W. 448.

Where defendant's trial was delayed that his demurrer might be heard he was not entitled to a dismissal, State v. Fox, 71 W. 185.

Motion to dismiss must be made before trial, State v. Alexander, 65 W. 488.

Does not apply to a second trial after an appeal, State v. Miller 72 W. 154, 174.

Defendant not entitled to dismissal on his own appeal in superior court, State v. Parmeter 49 W. 435.

Sixty days runs from new trial when granted, In re Murphy 7 W. 257.

Trial had after sixty days will be presumed regular—plea entered forty-five days after information and no showing of time of arraignment will not be reviewed, State v. Van Waters 36 W. 358.

Dismissal is not bar, State ex rei. Repath v. Caldwell 9 W. 336.

Failure of trial because of no term of court with jury defendant entitled to discharge, State v. Brodie 7 W. 442.

Sixty days runs from a second information, State v. Hansen 10 W. 235.

**§9144. Discharge of Defendant and Bail Upon Dismissal. §61.** Whenever the court shall direct any criminal prosecution to be dismissed, the defendant shall, if in custody, be discharged therefrom, or if admitted to bail, his bail shall be exonerated, and if money has been deposited instead of bail it shall be refunded to the person depositing the same.

**§9145. Nolle Prosequi. §62.** The court may, either upon its own motion or upon application of the prosecuting attorney, and in furtherance of justice, order any criminal prosecution to be dismissed; but in such case the reason of the dismissal must be set forth in the order, which must be entered upon the record. No prosecuting attorney shall hereafter discontinue or abandon a prosecution except as provided in this section.

Section does not apply to amendment of information, State v. Haffer 94 W. 136. 135 §123.

Reasons do not have to be given when new information is to be filed, State v. Hansen 10 W. 235.

**§9146. Dismissal, When a Bar. §63.** An order dismissing a prosecution under the provisions of sections 59, 60, or 62 of this act shall bar another prosecution for a misdemeanor or gross misdemeanor where the prosecution dismissed charged the same misdemeanor or gross misdemeanor; but in no other case shall such order of dismissal bar another prosecution.

Dismissal by justice on charge of gross misdemeanor does not preclude charge of felony for same offense—following section does not apply, State v. Wickstrom 92 W. 503.

Dismissal for variance with another information is not a bar, State v. Poole, 64 W. 47.

Information for misdemeanor not included offense quashed is not bar to information for felony, State v. Campbell 40 W. 480.

Discharge on information for assault and battery is bar to charge for attempted mayhem on same facts, State v. Durbin 32 W. 289.

Discharge under §9142 is not a bar, State ex rel. Repath v. Caldwell 9 W. 336.

Dismissal is not bar to felony, State v. Lewis 31 W. 75.

One charged with felony but convicted of a misdemeanor is not entitled to claim bar because of the dismissal of a prior information, State v. Armstrong 29 W. 57.

**§9147. Acquittal, When a Bar. §64.** No order of dismissal or directed verdict of not guilty on the ground of a variance between the indictment or information and the proof, or on the ground of any defect in such indictment or information, shall bar another prosecution for the same offense. Whenever a defendant shall be acquitted or convicted upon an indictment or information charging a crime consisting of different degrees, he cannot be proceeded against or tried for the same crime in another degree, nor for an attempt to commit such crime, or any degree thereof. Minn. C. 05 §4792.

Variance, second charge §9379.

Second charge if judgment arrested §9345.

Charge set aside is not bar, §§9157, 9167; is bar §9159.

Does not apply to dismissals before trial, State v. Wickstrom 92 W. 503.

The above section supersedes former law providing bar—title of act sufficient—

implied repeal—information insufficient, no jeopardy—reversal on appeal not jeopardy, State v. George 84 W. 113.

"Proof" includes evidence disclosed to the prosecuting attorney on interviewing witnesses in preparing the case, State v. Poole, 64 W. 47.

Where information would not sustain a conviction it is not a bar, State v. Burns 54 W. 113.

## ACCUSED, RIGHTS OF, CODE 1881.

## RIGHTS OF PARTIES ACCUSED.

**§9148. How Accused Held. §764.** No person shall be held to answer in any court for an alleged crime or offense, unless upon an information filed by the prosecuting attorney, or upon an indictment by a grand jury, except in cases of misdemeanor before a justice of the peace, or before a court martial.

Rights of accused, later act, §9136. Not necessary for state to reply to criminal defense, *State v. Lewis*, 31 W. 515.

**§9149. Court Must Be Competent. §770.—7.** No person charged with any offense against the law shall be punished for such offense, unless he shall have been duly and legally convicted thereof in a court having competent jurisdiction of the case and of the person.

**§9150. Benefit of Clergy. §1171.—409.** The plea of the benefit of clergy is abolished.

## ARRAIGNMENT.

## CHAPTER 85.

## OF THE ARRAIGNMENT OF THE DEFENDANT AND WITNESSES AND EVIDENCE.

**§9151. Arraignment. §46.** When the indictment or information has been filed, the defendant, if he has been arrested, or as soon thereafter as he may be, shall be arraigned thereon before the court.

Must be tried within sixty days, §9143. *State v. Bodeckar* 11 W. 417; *State v. Blanchard* 11 W. 116.

Motions and demurrer should be interposed upon plea of not guilty and not by objection to introduction of testimony, Arraignment defined and in murder it can not be dispensed with, *Ellick v. Territory* 1 W. T. 137.

**§9152. Defendant's Pleading. §1045.** In answer to the arraignment, the defendant may move to set aside the indictment or information, or he may demur or plead to it, and is entitled to one day after arraignment in which to answer thereto if he demand it.

Grounds of motion to set aside information, §9265; sufficiency of indictment or information, §9281. Indictment or information must contain what, §9268.

**§9153. When Motion to Set Aside Must Be Sustained. §1046.—284.** The motion to set aside the indictment can be made by the defendant, on one or more of the following grounds, and must be sustained:

1. When it is not endorsed "a true bill," and the endorsement signed by the foreman of the grand jury as prescribed by this code.

2. When the names of all the witnesses examined before the grand jury are not endorsed thereon.

3. When it has not been presented and marked "filed," as prescribed by this code;

4. When any person, other than the grand jurors was present before the grand jury when the question was taken upon the finding of the indictment, or when any person, other than the grand jurors, was present before the grand jury during the investigation of the charge, except as required or permitted by law.

5. That the grand jury were not selected, drawn summoned, empaneled, or sworn as prescribed by law.

Motions to set aside information, §9265. names drawn invalid, *State ex rel. Murphy v. Superior Court* 82 W. 284.

Grounds of demurrer, §9167.

Arbitrarily selecting grand jury from Accused not a "witness," *State v. Kulbe*, 67 W. 21.

**§9154. — Exception. §1047.—285.** The ground of the motion to set aside the indictment mentioned in the fifth subdivision of the preceding section is not allowed to a defendant who has been held to answer before indictment.



**§9155. Motion Denied, Immediate Answer.** §1048. If the motion to set aside the indictment or information be denied, the defendant must immediately answer the indictment or information, either by demurring or pleading thereto. L. '91 46.

**§9156. Objection Sustained, Defendant to Be Held.** §1049. If the court direct that the case be resubmitted, the defendant, if already in custody, must so remain, unless he be admitted to bail; or if already admitted to bail, or money has been deposited instead thereof, the bail or money is answerable for the appearance of the defendant to answer a new indictment or information.

If demurrer sustained unless for facts showing defense it is error to discharge defendant, *State v. Bodeckar* 11 W. 417.

**§9157. Charge Set Aside Is Not Bar.** §1050. An order to set aside the indictment or information as provided in this chapter shall be no bar to a future prosecution for the same offense.

Acquittal when a bar, §9147.

Judgment on verdict is bar, §9166.

**§9158. Grounds of Demurrer.** §1051. The defendant may demur to the indictment or information when it appears upon its face either;

1. That it does not substantially conform to the requirements of this code.

2. More than one crime is charged.

3. That the facts charged do not constitute a crime.

4. That the indictment or information contains any matter which if true would constitute a defense or other legal bar to the action.

Grounds of motion to set aside—indictment, §9153; information, §9265.

**§9159. When Judgment on Demurrer Bar.** §1052. If the demurrer is sustained because the indictment or information contains matter which is a legal defense or bar to the action, the judgment shall be final, and the defendant must be discharged.

When judgment on demurrer is not bar, §9158.

**§9160. Demurrer Overruled—Procedure.** §1053.—291. If the demurrer is overruled the defendant has a right to put in a plea. If he fails to do so, judgment may be rendered against him on the demurrer, and, if necessary, a jury may be impaneled to inquire and ascertain the degree of the offense.

**§9161. Pleas.** §1054. There are but three pleas to the indictment or information. A plea of,

1. Guilty.

2. Not guilty.

3. A former judgment of conviction or acquittal of the offense charged, which may be pleaded with or without the plea of not guilty.

Denial of separate pleas of not guilty and former jeopardy sustained, *State v. Elliott*, 69 W. 62.

Failure to enter plea is not reversible error and can not be raised in first instance in the Supreme Court—plea entered by nunc pro tunc order, *State v. Straub* 16 W. 111.

assigned is cured by vacating plea and allowing demurrer, *State v. Boyce* 24 W. 514.

No reply necessary to plea of former acquittal, *State v. Lewis* 31 W. 515.

When the jury disagrees plea of former acquittal can not be interposed *State v. Costello* 29 W. 366.

Trial without plea is reversible error, *Palmer v. United States* 1 W. T. 6.

**§9162. Forms of Entry of Pleas.** §1055. The plea may be entered on the record, substantially, in the following form:

1. A plea of guilty: The defendant pleads that he is guilty of the offense charged in the indictment (or information as the case may be).

2. A plea of not guilty: The defendant pleads that he is not guilty of the offense charged in the indictment (or information as the case may be).

3. A plea of former conviction or acquittal: The defendant pleads that he has formerly been convicted (or acquitted, as the case may be) of the offense charged in the indictment (or information, as the case may be), by the judgment of the court of (naming it), rendered on the \_\_\_\_\_ day of \_\_\_\_\_, A. D. 18\_\_\_\_ (naming the time).

Change of name in new indictment after Nor is new indictment under different acquittal, not ground for plea of former statute for same offense, *State v. Reiff* jeopardy, *State v. Friedrick*, 4 W. 204. 14 W. 664.

Cited 84 W. 113.

§9163. **Plea of Guilty Only in Person.** §1056.—294. The plea of guilty can only be put in by the defendant himself in open court.

In misdemeanors punishable by fine only Plea is personal and "not guilty" can defendant may appear by counsel, §9173. not be entered by attorney, *Elick v. Territory* 1 W. T. 137.

§9164. **Withdrawal of Plea.** §1057.—295. At any time before judgment, the court may permit the plea of guilty to be withdrawn, and other plea or pleas substituted.

Mandamus will not lie to compel superior court to pronounce judgment on plea of guilty, *State ex Lundin v. Court* 102 W. 600. Substitution should be permitted where plea entered under promises and communication with friends prevented, *State v. Allen*, 41 W. 63.

Motion after judgment is application to vacate judgment and showing of irregularity must be clear, *State v. Scott* 101 W. 199. Allowance of withdrawal discretionary—properly refused when defendant claimed promised immunity which was denied, *State v. Cimini* 53 W. 268.

§9165. **Plea of Not Guilty Is General Denial.** §1058. The plea of not guilty is a denial of every material allegation in the indictment or information; and all matters of fact may be given in evidence under it, except a former conviction or acquittal.

**Judgment on Verdict Is Bar.** §1059. Repealed by §9147.

Foreign acquittal or in another county §9378. a bar, §8706.

Verdict and judgment arrested is not bar, not bar, §9157. §9345. Information or indictment set aside is

Judgment on demurrer is bar, §9159.

Acquittal when a bar, §9147.

Discharge of defendant to give testimony for state or co-defendant is bar, *State v. Hazzard* 75 W. 5. Acquittal by judgment on defective information a bar, *State v. Burns* 54 W. 113. Crime committed between two dates and in two counties venue is either county,

§9167. **Technical Defect Not Bar.** §1060. The judgment for the defendant on a demurrer to the indictment or information, except where it is otherwise provided, or for an objection taken at the trial to its form or substance, or for variance between the indictment or information and the proof, shall not bar another prosecution for the same offense.

§9168. **Defendant's Refusal, Plea of Not Guilty Entered.** §1061. If the defendant fail or refuse to answer the indictment or information by demurrer or plea, a plea of not guilty must be entered by the court.

§9169. **Plea of Guilty, When Jury to be Called.** §1062.—300. If, on the arraignment of any person, he shall plead guilty, if the offense charged be not murder, the court shall, in their discretion, hear testimony, and determine the amount and kind of punishment to be inflicted; but if the defendant plead guilty to a charge of murder, a jury shall be empaneled to hear testimony, and determine the degree of murder, and the punishment therefor.

§9170. **When Counsel to be Assigned.** §1063.—301. If the defendant appear without counsel, he shall be informed by the court that it is his right to have counsel, before being arraigned and he shall be asked if he desire the aid of counsel, and if it appear that he is unable to employ counsel by reason of poverty, counsel shall be assigned to him, by the court.

Attorney assigned must act and can not collect fees from county, *Presby v. Klickitat County* 5 W. 329.

Defendant was not advised of his rights, was induced to plead guilty and was sentenced without jury trial held error, *State v. Allen* 41 W. 63.

§9171. **True Name of Defendant to be Ascertained.** §1064. When the defendant is arraigned he shall be interrogated, if the name by which he is indicted be not his true name; he shall then declare his true name, or be proceeded against by the name in the indictment or information.

Indictment or information by fictitious or erroneous name, §9271.

§9172. **True Name to Be Entered.** §1065. If he allege that another name is his true name it must be entered in the minutes of the court, and the subsequent proceedings on the indictment or information may be had against him by that name, referring also to the name by which he is indicted or informed against.



**§9173. Appearance by Counsel in Misdemeanors.** §1066. If the indictment or information be for a misdemeanor punishable by fine only, the defendant may appear upon arraignment by counsel.

Plea of guilty entered in person only, preme court, §9311.

§9163.

At trial security must be given or defendant must appear, §9373.

Personal appearance not necessary in su-

## ARRESTS AND BAIL.

Animals, cruelty to §§1957, 1967.

Appeal, bail to be fixed §7331.

Arrest and bail in civil procedure §7350;

Justices courts §9410.

Arrests under motor vehicle act §228;

weights and measures act §7258.

Coroner, warrant by §1746.

Fire wardens without warrant §2576.

Information or indictment, arrest on §9261

Justices of the peace, powers §9434.

Telegraph, warrants by §7793.

Witnesses must be subpoenaed §9215.

## OF PROCEEDINGS BEFORE TRIAL

**§9174. Arrest of Defendant.** §1026. When an indictment is found or an information filed, the court may direct the clerk to issue a warrant for the arrest of the defendant, returnable forthwith; if no order is made, the clerk must issue a warrant within ten days after the indictment is returned into court or the information filed.

At the time of issuing warrant clerk shall subpoena witnesses, §9215.

Arrest without warrant if for felony—  
Defendant answering without arrest on bond liable if no reasonable ground, Gree-  
warrant gives jurisdiction, State v. Mel- nius v. American Surety Co. 92 W. 401.

**§9175. To Whom Process Directed.** §1027.—265. All criminal process issuing out of the superior court, shall be directed to the sheriff of the county in which it is to be served, and be by him executed according to law. When there is no sheriff of a county, or he is disqualified from any cause from discharging any particular duty, it shall be lawful, for the officer or person commanding or desiring the discharge of that duty to appoint some suitable person, a citizen of the county to execute the same: Provided, That final process shall in no case be executed by any other person than the legally authorized officer, or in case he is disqualified, some suitable person appointed by the court or judge thereof out of which the process issues, who shall make such appointment in writing, and before such appointment shall take effect, the person so appointed shall give surety to the party interested, for the faithful performance of his duties, which bonds of suretyship shall be in writing and approved by the court or judge making the appointment, and be placed on file with the papers in the case.

Guards for prisoners §9208.

**§9176. Breaking Building to Make Arrest.** §1170.—408. To make an arrest in criminal actions, the officer may break open any outer or inner door, or windows of a dwelling house, or other building, or any other enclosure, if after notice of his office and purpose he be refused admittance.

**§9177. Bail Must Be Indorsed on Warrant.** §1028. The court must, at the time of directing the clerk to issue the warrant, fix the amount in which persons charged by indictment are to be held to bail, and the clerk must indorse the amount on the warrant. If no order fixing the amount of bail has been made, the sheriff may present the warrant to the judge of the court, and such judge must thereon indorse the amount of the bail to be required; or if there is no such judge in the county, the clerk may fix the amount of bail.

Allowance of bail §9141.

**§9178. Officer Must Show Authority.** §1030. The officer making an arrest must inform the defendant that he acts under authority of a warrant, and must also show the warrant if required.

**§9179. Accused Resisting Arrest.** §1031.—269. If after notice of the intention to arrest the defendant, he either flee or forcibly resist, the officer may use all necessary means to effect the arrest.

**§9180. Escape—Recapture.** §1032.—270. If a person arrested escape or be rescued, the person from whose custody he made his escape or was rescued, may immediately pursue and retake him at any time, and within any place in the state. To retake the person escaping, or rescued, the person pursuing has the same power to command assistance as given in cases of arrest.

**§9181. Recognizance in Open Court.** §1033.—271. Recognizances in criminal proceedings may be taken in open court and entered on the order book.

Security for fine given at trial must be stance, §§7431, 9350.

in writing, §9373.

Action on forfeited recognizance, §9347.

No bond to fail for want of form or sub-

Forfeiture of recognizance and bench warrant in case of failure to appear, §9310.

**§9182. Arresting Officer May Take Recognizance.** §1034.—272. Any officer authorized to execute a warrant in a criminal action, may take the recognizance and justify and approve the bail; he may administer an oath and examine the bail as to its sufficiency.

Bail shall justify as in civil cases, §9185.

In civil procedure every court or officer may examine surety, §7369.

**§9183. Report and Record of Recognizances.** §1035.—273. Every recognizance taken by any peace officer must be certified by him forthwith to the clerk of the court to which the defendant is recognized. The clerk must thereupon record the recognizance in the order book, and from the time of filing it has the same effect as if taken in open court.

**§9184. Money Bail.** §1036.—274. The defendant may, in the place of giving bail, deposit with the clerk of the court to which he is held to answer, the sum of money mentioned in the order, and upon delivering to the sheriff the certificate of deposit, he must be discharged from custody.

Money bail in civil cases, §7372.

depositing it rather than defendant, Mc-

Money presumptively belongs to person Almond v. Bevington 23 W. 315.

**§9185. Justification of Bail.** §1169.—407. Bail shall, when required, justify as in civil cases.

Qualification and justification in civil cases, §7365; officer authorized to execute warrant may justify bail, §9182.

**§9186. Forfeiture of Recognizance.** §1037.—275. If without sufficient excuse, the defendant neglect to appear for trial or judgment, or upon any other occasion when his presence in court may [be] lawfully required, according to the condition of his recognizance, the court must direct the default to be entered upon its minutes, and the recognizance of bail, or money deposited as bail, as the case may be, is [t]hereupon forfeited.

**§9187. Copies and List of Witnesses in Capital Cases.** §1038. As soon as may be after the finding of an indictment or the filing of an information for a capital crime, the party charged shall be served with a copy thereof, by the sheriff or his deputy, at least twenty-four hours before trial, and shall, on demand upon the clerk, by himself or counsel, have a list of the petit jurors returned delivered to him at least twenty-four hours before trial, and shall also have process to summon such witnesses as are necessary to his defense, at the expense of the county. L. '91 46.

Jurors may be selected from others than proceeding, State v. Quinn 56 W. 295.

list and before list exhausted, State v. Mayo 42 W. 540.

Copies are a privilege and waived by proceeding in case, State v. Newcomb 58

Copy is a privilege and is waived by W. 414.

**§9188. Copies—Fees.** §1039. Every person indicted or informed against for an offense for which he may be imprisoned in the penitentiary, if he be under recognizance or in custody to answer for such offense, he or his attorney shall be furnished with a copy of the indictment or information and of all indorsements thereof without paying any fees therefor. L. '91 46.

**§9189. Compounding Misdemeanors.** §1040.—278. When a defendant is prosecuted in a criminal action for a misdemeanor, for which the person injured by the act constituting the offense has a remedy by a civil action,



the offense may be compromised as provided in the next section, except when it was committed:

1. By or upon an officer while in the execution of the duties of his office.

2. Riotously: or,

3. With an intent to commit a felony.

Crimes cannot be compounded §9191.      mitting magistrate, §9611.

Compounding crimes, act '09, §8782.

Compounding misdemeanor before com-      Justice of the peace may compel the in-  
jured person to appear by attachment,  
§9440.

§9190. — Procedure—Bar. §1041. In such case, if the party injured appear in the court in which the cause is pending at any time before the final judgment therein, and acknowledge in writing that he has received satisfaction for the injury, the court may, in its discretion, on payment of the costs incurred, order all proceedings to be discontinued and the defendant to be discharged. The reasons for making the order must be set forth therein and entered in the minutes. Such order is a bar to another prosecution for the same offense. L. '91 46.

§9191. Crimes Not to Be Compounded. §1043. No offense can be compromised, nor can any proceedings for the prosecution or punishment thereof be stayed upon a compromise, except as provided in this chapter. L. '91 46.

§9192. Custody of Prisoners—Expense. §1165.—403. All prisoners whom it may be necessary to convey to the place where the superior court is held or to any place for an examination before the judge, if conveyed beyond the bounds of the county in which they are confined, shall be conveyed to and from their place of confinement, by the sheriff of the county in which they are confined, or the sheriff of the county to which such prisoner belongs, at the expense, in the first instance, of the county to which such prisoner belongs; and such sheriff shall have a right to the custody of the prisoner within the limits of any county in this state through which he may pass; and for the temporary confinement of his prisoner, may use the county [jail of any county free of charge, except for board, which shall not exceed thirty cents a meal.]

Maximum allowance for board of prisoners, §3419.

## CONSTRUCTION.

Criminal code, 1909, construction of §8733. Person defined §9276.  
Number and gender §9277.

§9193. Construction of Act. §1292.—531. The provisions of this act so far as they are substantially the same as existing statutes must be construed as continuations thereof and not as new enactments.

Construction of entire code of 1881 and code 1881 as a criminal code considered—former laws, §1351.      re-enactments and repeals, In re Donnellan

Re-enactments as continuations—later 49 W. 460.

section, §9197.

Validity of Sunday theater closing and sede ordinance, Seattle v. MacDonald 47 W. 298.

§9194. Limitation of Actions. §1294.—533. When a limitation or period of time prescribed in any existing statute for acquiring a right or barring a remedy has begun to run before this act takes effect, and the same or any limitation is prescribed in this act, the time which has already run shall be deemed part of the time, prescribed as such limitation by this act.

§9195. Act Is Measure of the Law. §1295.—534. No statute, law, or rule is continued in force because it is consistent with the provisions of this act, on the same subject, but in all cases provided for by this act, all statutes, laws, and rules, heretofore in force in this state, whether consistent or not, with the provisions of this act, unless expressly continued in force by it, are repealed and abrogated.

**§9196. Repeal Does Not Revive Former Law.** §1296.—535. This repeal, or abrogation, does not revive any former law heretofore repealed, nor does it affect any right already existing or accrued, or any action or proceeding already taken, except as in this act provided; nor does it repeal any private statute not expressly repealed.

**§9197. Law of 1891 Is Continuation of Former Law.** §46. All acts and parts of acts in force at the time of the passage of this act, relating to the same subject are continued in force so far as not repugnant to the provisions of this act, and the provisions of this act so far as they are the same as those of acts and parts of acts upon the same subject in force at the time of the passage hereof, are to be construed as continuations of such provisions.

• • • L. '91 119. Territorial laws in force §9260. Former section, §9193.

**Supplementary—AN ACT** providing a general savings clause and savings provisions in case of the repeal or amendment of criminal or penal statutes and declaring an emergency. Approved June 13, 1901. Laws '01. Ex. Sess. p 13.

**§9198. Construction of Criminal Statutes.** §1. No offense committed and no penalty or forfeiture incurred previous to the time when any statutory provision shall be repealed, whether such repeal be express or implied, shall be affected by such repeal, unless a contrary intention is expressly declared in the repealing act, and no prosecution for any offense, or for the recovery of any penalty or forfeiture, pending at the time any statutory provision shall be repealed, whether such repeal be express or implied, shall be affected by such repeal, but the same shall proceed in all respects, as if such provision had not been repealed, unless a contrary intention is expressly declared in the repealing act. Whenever any criminal or penal statute shall be amended or repealed, all offenses committed or penalties or forfeitures incurred while it was in force shall be punished or enforced as if it were in force, notwithstanding such amendment or repeal, unless a contrary intention is expressly declared in the amendatory or repealing act, and every such amendatory or repealing statute shall be so construed as to save all criminal and penal proceedings, and proceedings to recover forfeitures, pending at the time of its enactment, unless a contrary intention is expressly declared therein.

Act saves pending prosecutions under State v. Newcomb 58 W. 414.

acts repealed, State v. Hanover 55 W. 403. Act valid—legislative action not re-

Act saved laws prior to penal code, stricked to purpose declared in proclamation, State v. Fair 35 W. 127.

## CORPORATIONS.

**AN ACT** relating to procedure in criminal actions against corporations.

Approved February 28, 1911. Laws '11 p 106.

**§9199. Corporation Indicted—Procedure.** §1. Whenever an indictment or information shall be filed in any superior court against a corporation charging it with the commission of a crime, a summons shall be issued by the clerk of such court, signed by one of the judges thereof, commanding the sheriff forthwith to notify the accused thereof, and commanding it to appear before such court at such time as shall be specified in said summons. Such summons and a copy of the indictment or information shall be at once delivered by such clerk to said sheriff and by him forthwith served and returned in the manner provided for service of summons upon such corporation in a civil action. Whenever a complaint against a corporation, charging it with the commission of a crime, shall be made before any justice of the peace or municipal judge, a like summons, signed by such justice of the peace or municipal judge, shall be issued, which, together with a copy of said complaint, shall be delivered to the sheriff at once and by him forthwith served as herein provided.

**§9200. Appearance.** §2. Upon such service being made such corporation shall appear at the time designated, by one of its officers or by counsel;



and upon such appearance, and thereafter, the same course shall be pursued, as nearly as may be, as upon the appearance of an individual to indictment, information or complaint and warrant charging him with the same offense. Upon failure of the corporation to make such appearance said court shall cause to be entered a plea of "not guilty," and upon appearance made or plea entered the corporation shall be deemed forthwith continuously present in court until the case shall be finally disposed of.

§9201. Judgment. §3. If the corporation shall be found guilty and a fine imposed, it shall be entered and docketed by the clerk, or justice of the peace or municipal judge as a judgment against the corporation, and it shall be of the same force and effect and be enforced against such corporation in the same manner as a judgment in a civil action.

## COSTS.

Civil cases §7456; schedule of fees, county, etc., officers §7477.

§9202. Defendant Discharged Not Liable for Costs. §1168.—406. No prisoner or person under recognizance who shall be acquitted by verdict, or discharged because no indictment is found against him, or for want of prosecution, shall be liable for any costs or fees of any officer or for any charge of subsistence while he was in custody but in every such case the fees of the defendant's witnesses, and of the officers for services rendered at the request of the defendant; and charges for subsistence of the defendant while in custody shall be taxed and paid as other costs and charges in such cases.

No costs on acquittal, but chargeable to complainant or county, §9203. City is liable for costs if defendant is acquitted on charge under ordinance, Spokane v. Smith 37 W. 583.

Supplementary—AN ACT to establish the amount and provide for the payment of Costs in Certain Cases. Approved December 7, 1281. C81 §2103-12.

§9203. Costs. §2103.—1. That when any person shall be brought before a court, justice of the peace, or other committing magistrate of any county, city or town in this state, having jurisdiction of the alleged offense, charged with the commission of a crime or misdemeanor, and such complaint upon examination shall appear to be unfounded, no costs shall be payable by such acquitted party, but the same shall be chargeable to the county, city or town for or in which the said complaint is triable. But if the court, justice of the peace or other magistrate trying said charge shall decide that the complaint was frivolous or malicious, the judgment or verdict shall also designate who is the complainant, and may adjudge that said complainant pay the costs. In such cases a judgment shall thereupon be entered for the costs against said complainant, who shall stand committed until such costs be paid or discharged by due process of law.

No costs against defendant on acquittal peace bond, §9574.

In any case, §9202.

Public officers not allowed fees in public cases, §7500.

Witnesses to report time, jurors to verify mileage, §7499.

Against complainant before committing magistrate, §9601.

Before committing magistrate certified up and abide final determination of case, §9613.

Commitment of defendant for costs on 3 W. 672.

Complainant liable in peace bond, when, §9573.

Commitment where complaint frivolous is due process of law and is not imprisonment for debt, Colby v. Backus 19 W. 347.

Only magistrates can tax costs to complaining witness if complaint malicious, Town of Ilwaco v. Miller 8. W. 449.

Jury on acquittal of defendant cannot find complaint malicious, In re Permstick

§9204. — Finding of Grand Jury. §2104.—2. When a grand jury upon a complaint submitted to them for investigation fail to find a bill of indictment for an offense against the laws of the state, they shall also inquire whether the complaint is frivolous or malicious, and decide whether the county or complainant shall pay the costs, and make return of their finding in open court. Any complainant adjudged by said grand jury as liable for the costs, shall forthwith be brought into court and sentenced to pay the same or stand committed until such judgment is satisfied or complied with.

§9205. — **Jury Fee.** §2105.—3. Every person convicted of a crime or held to bail to keep the peace, shall be liable to all the costs of the proceedings against him, including, when tried by a jury in the superior court, twelve dollars for a jury fee, and when tried by a jury before a committing magistrate, six dollars for jury fee, for which judgment shall be rendered and collection had as in cases of fines. The jury fee, when collected for a case tried by the superior court, shall be paid to the clerk, to be by him applied as the jury fee in civil cases is applied.

**Jury, clerk's and sheriff's fees chargeable,** *State v. Armstrong* 29 W. 57.

**Amendatory—AN ACT to amend Sections 2106 and 2107 of the Code of Washington. Costs in certain cases.** Approved November 28, 1883. Laws '83 p 35.

§9206. **Cost Bills.** §2106. In all convictions for felony, whether capital or punishable by imprisonment in the penitentiary, the clerk of the superior court shall forthwith, after sentence, tax the costs in the case. The cost bill shall be made out in triplicate, and be examined by the prosecuting attorney of the county in which the trial was had. After which the judge of the superior court shall allow and approve such bill or so much thereof as is allowable by law. The clerk of the superior court shall thereupon, under his hand, and the seal of the court, certify said triplicate cost bills, and shall file one with the papers of the cause and shall transmit one to the state auditor and one to the county auditor of the county in which said felony was committed. L. '83 35

**Duty of prosecuting attorney to retax court may pass on items, State ex rel. cost bills,** §1795. *Carraher v. Graves* 13 W. 485.

**Prosecuting attorney should not strike Costs chargeable to the state, State ex rel. out items but report disallowance that the** *Thurston County v. Grimes* 7 W. 445.

§9207. **Payment of Costs.** §2107. Upon the receipt of the cost bill, as provided for in the preceding section, the county auditor shall draw warrants for the amounts due each person, as certified in said cost bill, which warrants shall be paid as other county warrants are paid. On receipt of the certified copy of said cost bill, the state auditor shall examine and audit said bill and allow the same or so much thereof as may be allowable against the state, and shall credit the amount so allowed to the county from whence the bill came as so much state tax paid. The state auditor shall immediately notify the state treasurer and county auditor each of whom shall credit and charge accordingly. L. '83 35.

§9208. **Guards for Prisoners.** §2108.—6. In the necessary and actual transportation of prisoners to await or attend trial, the sheriff may employ necessary guards, not to exceed one for each prisoner. Said guards shall be allowed two dollars per day and mileage. The sheriff shall be allowed in conveying prisoners to and from the county to the place of trial, or to and from the place of confinement the mileage of officer, guard or guards, and prisoner or prisoners, or else the actual expenses incurred.

§9209. **Costs on Account of Other Counties.** §2109.—7. Whenever a juror, witness or officer is required to attend a court, or travel on official business out of the limits of his own county, and entitled to mileage, in lieu thereof, he may at his option receive his actual and necessary traveling expenses by the usually traveled route in going to and returning from the place where the court is held, or where the business is discharged. At the close of each term of the superior court, the clerk shall ascertain the amount due each juror for his mileage and per diem; and he shall also certify the amount of fees that may be due to the sheriff of any other county than that in which the court is held, who may have attended the term, having a prisoner in custody charged with or convicted of a crime, or for the purpose of conveying such prisoner to or from the county, which, when approved by the court, or judge, shall be a charge upon the county to which the prisoner belongs; and he shall also certify the amount which may be due witnesses attending from another county in a criminal case for their fees, which, when, approved by the court or judge, shall be a charge upon the county to which the case belongs.



§9210. **Items Chargeable.** §2110.—8. Each county shall be liable to pay the per diem and mileage, or other compensation in lieu thereof, to jurors of the county attending the superior court; the fees of the sheriff for maintaining prisoners charged with crimes, and his costs in conveying them to and from the superior court, as well as their board while there; the per diem and mileage, or such other compensation as is allowed in lieu thereof, of the sheriff of the county, when in criminal cases he is required to attend or travel to the superior court out of the limits of his own county; the costs in criminal cases taken from the county to the superior court: Provided, That none shall be so paid by the treasurer unless the particular items shall be approved by the judge and certified by the clerk under the seal of the court: And, provided further, That for the time or travel which may be paid by the parties or United States, no payment from the county fund shall be allowed, and no officer, juror or witness shall receive from the county double pay as a per diem for the same time, or as traveling expenses or mileage for the same travel, in how many different capacities, or in however many different causes they may be summoned, notified or called upon to testify or attend in. Territorial section. "United States" should read "state."

§9211. **Court House, Jails and Incidentals.** §2111.—9. The county in which the court is held shall furnish the court house, a jail or suitable place for confining prisoners, books for record, stationery, lights, wood, attendance and other incidental expenses of the court house and court. • • •

§9212. **Costs Belong to County.** §2112.—10. All costs collected against any person convicted of crime or misdemeanor, and all sums collected on recognizances of persons accused, or of witnesses in criminal cases, for fines and forfeitures, shall belong to the county from which the case came.

All fines and forfeitures belong to county, §§9305, 9332.

## DOCKET.

### CHAPTER 84.

#### OF THE DOCKET.

§9213. **Contents of Docket.** §1044. The clerk shall, in preparing the docket of criminal cases, enumerate the indictments and informations pending according to the date of their filing, specifying opposite to the title of each action whether it be for a felony or misdemeanor, and whether the defendant be in custody or on bail, and shall, in like manner, enter therein all indictments and informations on which issues of fact are joined, all cases brought to the court on change of venue from other counties, and all cases pending upon appeal from inferior courts. L. '91 46.

## EVIDENCE.

§9214. **Witnesses—Compelling Attendance—Detention in Custody—Per Diem—Accused as Witness.** §1067. Witnesses may be compelled to attend and testify before the grand jury; and witnesses on behalf of the state, or of the defendant, in a criminal prosecution, may be compelled to attend and testify in open court, if they have been subpoenaed, without their fees being first paid or tendered, unless otherwise provided by law; the court may, upon the motion of the prosecuting attorney, recognize witnesses, with or without sureties, to attend and testify at any hearing or trial in any criminal prosecution in any court of this state, or before the grand jury, and in default of such recognizance the court may direct that such witness shall be detained in the custody of the sheriff until the hearing or trial of the prosecution in which such testimony may be required: Provided, however, That each witness so detained by order of court pursuant to the provisions of this section, shall be paid, in addition to witness fees for actual attendance in court, the sum of one dollar per day for time actually detained in custody, and shall be furnished food and lodging while so detained, and any person accused of any crime in this state, by indictment,

information, or otherwise, may, in the examination or trial of the cause, offer himself, or herself, as a witness in his or her own behalf, and shall be allowed to testify as other witnesses in such case, and when accused shall so testify, he or she shall be subject to all the rules of law relating to cross-examination of other witnesses: Provided, That nothing in this code shall be construed to compel such accused person to offer himself or herself as a witness in such case: And provided further, That it shall be the duty of the court to instruct the jury that no inference of guilt shall arise against the accused if the accused shall fail or refuse to testify as a witness in his or her own behalf. L. '15 260, R.&B. §2148.

Prosecuting attorney's remark on defendant's failure to testify cured by instruction of court. State v. Raub 103 W. 214.

Witnesses must report to clerk daily §7499.

Cannot be prosecuted on incriminating testimony §§8726, 9219.

Discharge of defendant to give evidence for state or co-defendant, §9378.

Attendance of witnesses in civil actions, §7759.

Recognizance of witnesses in change of venue, §9400.

Accused may be asked if ever convicted before, State v. Brownlow 89 W. 582.

Failure to instruct is error, State v. Hanes 84 W. 601; Contra State v. Ross 85 W. 218; former case affirmed, State v. Gustafson 87 W. 613.

Accused testifying is subject to all the rules of cross-examination, State v. Brooks 89 W. 427.

Defendant's credibility may be attacked, State v. Peeples, 71 W.

Comment on failure to explain evidence is not comment on failure of defendant to testify, State v. Smokalem 37 W. 91.

It is error to not instruct of court's own motion against inference of guilt where defendant is not a witness, Linbeck v. State 1 W. 336; State v. Myers 8 W. 177.

Proof of former conviction of similar offense to affect credibility done in improper manner also proof of another crime not interwoven was error, State v. Gottfriedson 24 W. 398.

Instruction on failure to testify ap-

§9215. When Warrant and Subpoenas, Simultaneous—State's Continuance. §1068.—306. The clerk shall, at the time of issuing a warrant for the defendant, issue a subpoena for all the witnesses whose names are endorsed on the indictment and any others required; but in no case shall a continuance be granted to the state on account of the absence of any witnesses whose name is not endorsed on the indictment.

Warrant for accused §9177.

Continuance allowed defendant when, §9361.

§9216. Competency of Witnesses—Privilege. §1069.—307. Witnesses competent to testify in civil cases shall be competent in criminal prosecutions, but regular physicians or surgeons, clergymen or priests, shall be protected from testifying as to confessions, or information received from any defendant, by virtue of their profession and character. Indians shall be competent witnesses as hereinbefore provided, or in any prosecutions in which an Indian may be a defendant.

Defendant as states voluntary witness, §9378.

Proof of former conviction of witness is the judgment, State v. Payne 6 W. 563.

Conviction of misdemeanor can not be shown to affect credibility, id.

proved, State v. Mitchell 32 W. 64.

Though defendant offers himself as a witness he can not be compelled to criminate himself, State v. O'Hara 17 W. 525.

Defendant on charge of burglary testified that he had not solicited to plead guilty to larceny may be impeached as to such fact, State v. Burton 27 W. 528.

Defendant offered as a witness to certain points refused state may comment on failure to deny material facts, State v. Ulsemer 24 W. 657. In such case the instruction of the court that defendant's testimony is to be weighed as other witnesses is not error, id.

Interpreter subpoenaed will not render him incompetent State v. Michel 20 W. 162.

Court said "no inference of guilt should arise" instead of "shall arise," held not error, State v. Krug 12 W. 289.

Dying declaration of patient that he had been "butchered" by the doctors is admissible in charge of manslaughter, State v. Gile 8 W. 12.

When defendant is witness court may charge jury to consider "great interest" of defendant, State v. Nordstrom 7 W. 506.

Defendant may be cross-examined fully and questioned as to flight after crime, State v. Duncan 7 W. 336.

Witness may be asked if she is a prostitute unless she claims exemption because incriminating—witness' opinion of guilt—hearsay—threats to third party of killing. State v. Coella 3 W. 99.

Defendant as a witness is subject to rules of examination, Thompson v. Territory 1 W. T. 548.

This section is in force as to issuance of subpoenas and it seems would apply to continuances under informations, §9260.

Although witness remains in court room against order of court defendant entitled to his testimony but fact may be commented on, State v. Lee Doon 7 W. 308.

Witness testifying to facts testified to by other deceased witness may identify



exhibit, *State v. Cushing* 17 W. 544.

Witness ignorant of order excluding witnesses allowed to testify, *State v. Burton* 27 W. 528.

Chinese witness sworn according to his religion and afterward according to our

statute not error, *State v. Gin Pon* 16 W. 425.

Witness's conclusion that defendant did not show interest in why arrest was made held not prejudicial, *State v. Norris* 27 W. 453.

**§9217. Confession as Evidence.** §1070.—308. The confession of a defendant made under inducement, with all the circumstances, may be given in evidence against him, except when made under the influence of fear produced by threats; but a confession made under inducement is not sufficient to warrant a conviction without corroborating testimony.

Conviction on confession, §9140.

No duty to remind accused—accused may be asked if ever convicted, *State v. Brownlow*, 89 W. 582.

Obtained by threats of prosecutor inadmissible, *State v. Miller*, 68 W. 239.

Instruction that confession inadmissible unless voluntary, sustained, *State v. Wilson*, 68 W. 464.

Duress is mixed question of law and fact for the judge, *State v. Barker* 56 W. 510.

Confession under threats by prosecuting attorney and solitary confinement set aside *State v. Miller* 61 W. 125.

Voluntary confession before committing magistrate may be received, *State v. Washington* 36 W. 485.

Duress is mixed question of law and fact—confessions of wife implicating husband, *State v. Mann* 39 W. 144.

Plea of guilty in justice court though withdrawn in superior court may be given in evidence, *State v. Bringgold* 40 W. 12.

Admissions before committing magistrate and to jailer admitted, *State v. Carpenter* 32 W. 254.

Admission by defendant that he knew larceny had been committed is not a confession, *State v. Payne* 6 W. 563.

When self-defense is interposed confession of bare fact of killing under fear may be admitted, *State v. Coella* 8 W. 512.

Confession by one defendant not to be

used against the other and where defendants jointly tried it should be made clear to jury, *State v. Johnny Tommy* 19 W. 270.

Absence of fear or threats must affirmatively appear but need not be testified to in the language of the statute, *State v. Newton* 29 W. 373.

Confessions on preliminary hearing admissible, *State v. Lyts* 25 W. 347.

Confession to officer being ignorant that he is officer is admissible, *State v. Coella* 3 W. 99.

In trial for murder weight of admissions to officers not made under duress is for jury, *State v. Webster* 21 W. 63.

Confederate allowed separate trial, confession of another does not bind him, *State v. McCullum* 18 W. 394.

Confession obtained by keeping in dark cell is not admissible, *Id.*

Admissions in civil action not given under compulsion are admissible, *State v. Hopkins* 13 W. 5; it seems that pleadings are not admissible *Id.*

Fair confession of defendant may be used against accomplice, *State v. Cass* 12 W. 673.

Inculpatory exclamations of defendant not made under duress admissible, *State v. Munson* 7 W. 239.

In testifying to admissions witness need not remember entire conversation, *Yelm Jim v. Territory* 1 W. T. 63.

**§9218. Rules of Evidence in Civil Cases Apply.** §1071.—309. The rules of evidence in civil actions, so far as practicable, shall be applied to criminal prosecutions.

Witnesses and evidence in civil actions, §7721.

Personal effects of prisoner may be taken from his person and used as evidence, *State v. Nordstrom* 7 W. 506.

In embezzlement, pleadings of former civil action may not be used as evidence, *State v. Hopkins* 13 W. 5.

Maps may be admitted on identification of hostile witness, *State v. White*, 10 W. 611. But see, *Leonard v. Territory*, 2 W. T. 381.

Stenographic notes of former trial cannot be used to impeach witness, *State v. Freidrick* 4 W. 205.

Clothing of deceased admissible in murder trial, *State v. Cushing*, 14 W. 527.

Stolen money need not be put in evidence in larceny trial, *State v. Munson*, 7 W. 239.

In trial for resisting arrest, evidence of innocence of charge for which arrested inadmissible, *State v. Symes*, 20 W. 484.

Letter by conspirator admitted without proof of handwriting, *State v. Dilley*, 40

W. 207. See *State v. Fillpot*, 51 W. 223.

Burden of proof never on defendant to show nonexistence of facts constituting crime, *State v. Conahan*, 10 W. 268.

In bigamy, burden on defendant to show invalidity of first marriage, *State v. Kniffen*, 44 W. 485.

Credibility of prostitute as witness is for jury to determine, *State v. Hill*, 45 W. 694.

Conviction of murder will not be set aside because evidence circumstantial, *State v. Smith*, 9 W. 341; see *State v. Craemer*, 12 W. 217.

Defendant in arson must be connected with crime by circumstances inconsistent with his innocence, *State v. Plenick*, 46 W. 522.

Circumstantial evidence must not admit possibility of commission of crime by another, *State v. Pagano*, 7 W. 549; see also *State v. Downing*, 24 W. 340.

Uncorroborated evidence of accomplice generally insufficient, *Edwards v. State*, 2 W. 291.

Necessity of spring guns question for

Jury, *State v. Barr*, 11 W. 482; see, *State v. Marfaudille*, 48 W. 117.

In trial for passing check with no funds evidence of similar occurrences inadmissible, *State v. Bokien*, 14 W. 403.

Identification of charred corpse by neighbors admissible in murder trial, *State v. Smith*, 9 W. 341.

Presumption in arson is that burning was accidental, *State v. Pienick*, 46 W. 522.

Dying declarations cannot be excluded on account of right of accused to meet witnesses face to face, *State v. Baldwin* 15 W. 15. See, *State v. Gile* 8 W. 12; *State v. Freidrich*, 4 W. 205.

Nonexpert witness may give his opinion as to insanity of defendant, *State v. Constantine*, 48 W. 218. But see, *State v. Brooks*, 4 W. 328.

Physicians opinion as to effect of intoxication on sanity of defendant admissible, *State v. Bridgham*, 51 W. 18.

In trial for obtaining money by false pretenses question is effect of pretense on person defrauded—other considerations, *State v. Knowlton*, 11 W. 512.

Statements made behind closed door are not made in presence of one in adjoining room, though they may they may have been heard, *State v. Baruth*, 47 W. 283.

On trial for murder of woman, evidence of simultaneous killing of child admissible, *State v. Craemer*, 12 W. 217.

In assault, evidence of quarrels admissible, *State v. Accles*, 8 W. 462.

Where murder results from conspiracy to terrorize community, evidence that knife held by another than one charged in indictment not variance, *State v. Brown*, 6 W. 609.

Where information charges homicide, by means of unknown "heavy blunt instrument," evidence of oar admissible, *State v. Carey*, 15 W. 549.

Proof of embezzlement in certain county may be by inference, *State v. Whiteman*,

9 W. 402; *State v. Gilluly*, 50 W. 1.

Evidence of good character of accused always admissible, *Klehn v. Territory*, 1 W. 584. But must be of a time not remote from that of crime, *State v. Barr*, 11 W. 481; see also, *State v. Cushing*, 14 W. 527; *State v. Clen*, 49 W. 273.

Good character of deceased in homicide trial not admissible unless assailed, *State v. Eddon*, 8 W. 292.

If defendant testifies, he is subject to rules governing other witnesses, *Thompson v. Territory*, 1 W. T. 548.

First wife not competent witness in bigamy trial, *State v. Kniffen*, 44 W. 485.

Interpreter should not be witness, *State v. Thompson*, 14 W. 285; *State v. Michel*, 20 W. 162.

Expert testimony as to effects of morphine on credibility of witness inadmissible, *State v. Robinson*, 12 W. 491; but see, *State v. White*, 10 W. 611.

Where statements of witness are offered to impeach his testimony, his attention must first be directed to the time, place and person involved in the supposed contradiction, *Thompson v. Territory*, 1 W. T. 547; see, *State v. Walters*, 7 W. 246.

Proof of former confinement in county jail irrelevant, *State v. Payne*, 6 W. 563.

Exclusion of impeaching testimony not error where a number of other witnesses have corroborated the testimony, *State v. Holmes*, 12 W. 169.

In trial for rape, evidence that prosecutrix was habitually away from home at night from 12 to 4 o'clock admissible where prosecutrix uncorroborated except by evident pregnancy, *State v. Mobley*, 44 W. 543.

Evidence of threats made by deceased against defendant in homicide admissible, *State v. Cushing*, 14 W. 527. But see, *State v. McGonigle*, 14 W. 594.

Depositions to show good character of defendant are not admissible, *State v. Humason* 5 W. 499; *State v. Hunter* 18 W. 670.

**AN ACT** relating to the competency of witnesses in certain cases, and providing for immunity from indictment, information, prosecution and punishment for such witnesses. Approved March 4, 1907. Laws '07 p 99.

**§9219. Evidence for State—Immunity.** §1. That any person offending against any provisions of the common law or statutes of the State of Washington or any ordinances of any municipality thereof, relating to bribery, grafting or corrupt solicitation, shall be a competent witness against any other person so offending, and may be compelled to attend and testify upon any trial, hearing, proceeding or investigation in the same manner as any other person. But the testimony so given shall not be used in any prosecution or proceeding, civil or criminal, against the person so testifying. A person so testifying shall not thereafter be liable to indictment, information, prosecution, or punishment for such offense.

**§9220. Exceptions.** §2. The provisions of this act shall not be applicable to any prosecution or proceeding before a committing magistrate or justice of the peace.

## FUGITIVES FROM JUSTICE.

**§9225. Agents to Demand Fugitives.** §971. The governor of this state may appoint agents to demand of the executive authority of any state or territory any fugitive from justice, or any other person charged with



felony or any other crime in this state; and whenever an application shall be made to the governor, for that purpose, the prosecuting attorney, when required by the governor, shall forthwith investigate the ground of such application, and report to the governor all material circumstances which may come to his knowledge, with an abstract of the evidence and his opinion as to the expediency of the demand; but the governor may, in any case, appoint such agents without requiring the opinion of or any report from the prosecuting attorney; and the accounts of the agents appointed for such purposes shall in all cases be audited by the state auditor and paid from the state treasury. L. '91 46.

Fugitive cannot be tried for lesser offense—court defining lesser offenses not error State v. Lindgrind 33 W. 440. question of law on the record, State v. Roller 30 W. 692.

Where crime charged is not one defendant was extradited for, objection should be made by plea in abatement presenting a question of law on the record, State v. Roller 30 W. 692. Fugitive may be tried for offense slightly different than that rendered for if there is no fraud, Harland v. Territory 3 W. T. 131.

**§9226. Rendition of Foreign Fugitive. §972.—209.** When a demand shall be made upon the Governor of this state by the executive of any state, or territory, in any case authorized by the constitution and laws of the United States, for the delivery over of any person charged in such state or territory with treason felony, or any other crime, the prosecuting attorney or any other prosecuting officer, when required by the Governor, shall forthwith investigate the ground of such demand, and report to the Governor, all material facts which may come to his knowledge as to the situation and circumstances of the person so demanded, especially as to whether he is held in custody or is under recognizance to answer for any offense against the laws of this state or of the United States, or by force of any civil process and also whether such demand is made according to law, so that such person ought to be delivered up; and if the Governor be satisfied that such demand is conformable to law and ought to be complied with, he shall issue his warrant under the seal of the state, authorizing the agents who make such demand, either forthwith, or at such time as shall be designated by the warrant, to take and transport such person to the line of the state, at the expense of such agents, and shall also by such warrant require the civil officers within this state to afford all needful assistance in the execution thereof.

Rendition under U. S. laws held good, Thorp v. Metzger 77 W. 62.

Governor may investigate demand by any agency he chooses—rendition made to governor of Alaska, In re Gillis 38 W. 156.

Fugitive will not be discharged on habeas corpus because requisition has no

seal, In re Baker 21 W. 259.

Custodian of fugitive in habeas corpus does not have to produce papers of demanding state—sufficiency of warrant. In re Sylvester 21 W. 263.

Requisition attested by lieutenant governor is good—courts will pass on sufficiency of foreign charge, Armstrong v. Van DeVanter 21 W. 682.

**§9227. Duty of Domestic Peace Officers. §973.—210.** Whenever any person shall be found within this state charged with an offense committed in any state or territory, and liable by the constitution and laws of the United States, to be delivered on the demand of the executive of such state or territory, any court or magistrate authorized to issue warrants in criminal cases, may, upon complaint under oath, setting forth the offense, and such other matters as are necessary to bring the offense within the provisions of law, issue a warrant to bring the person so charged before the same or some other court, or magistrate, so authorized within the state, to answer such complaint, as in other cases.

Proceedings in commitment of offender, ice of the peace had no jurisdiction nor power to forfeit bail money, State ex rel. §9597.

Pre-requisites to holding fugitive—just- Grass v. White 40 W. 560.

**§9228. Fugitive to Be Held. §974.—211.** If, upon the examination of the person charged, it shall appear to the court or magistrate, by proof, in addition to the oath of the complainant, that there is reasonable cause to believe that the complaint is true, and that such person may be lawfully demanded of the Governor, he shall, if not charged with a capital crime, be required to recognize with sufficient sureties, in a reasonable sum, to appear before such court or magistrate at a future day, allowing a reason-

able time to obtain a warrant of the executive, and to abide the order of the court or magistrate, and if such person shall not so recognize, he shall be committed to prison and there be detained until such day, in like manner as if the offense charged had been committed in this state; and if the person so recognizing shall fail to appear according to the conditions of his recognizance, he shall be defaulted, and the like proceedings shall be had as in the case of other recognizances entered into before such court or magistrate; but if such person be charged with a capital crime, he shall be committed to prison and there be detained until the day so appointed for his appearance before the court or magistrate.

Extradited prisoner may be tried for offense slightly different from charge, *Harland v. Territory*, 3 W. T. 131.

**§9229. Fugitive Discharged—Re-arrest.** §975.—212. If the person so recognized or committed shall appear before the court or magistrate upon the day ordered, he shall be discharged, unless he be demanded by some persons authorized by the warrant of the executive to receive him or unless the court or magistrate shall see cause to commit him, or require of him to recognize anew for his appearance at some other day; and if when ordered he shall not so recognize, he shall be committed and be detained as before provided. Whenever the person so appearing shall be recognized, committed or discharged, any person authorized by the warrant of the executive may at all times take him into custody, and the same shall be a discharge of the recognizance, if any, and shall not be deemed an escape.

**§9230. Costs.** §976.—213. The complainant in such cases shall be answerable for the actual costs and charges, and for the support in prison of any person so committed, and shall advance to the jailor one week's board at the time of commitment, and so from week to week, so long as such person shall remain in jail; and if he fails to do so, the jailor may forthwith discharge the person from his custody.

**AN ACT to provide for payment of expenses for capture and detention of criminals in a foreign jurisdiction.** Approved November 12, 1875. Laws '75 p 115.

**§9231. State to Pay Expense of Foreign Government.** §1. That the state auditor is hereby authorized to audit and allow, all just and legal claims, which any foreign government, or its officers, may have against this state, in accordance with the general fee-bills for like services, for the capture, detention, and keeping of any criminal who has escaped from this state, and taken refuge in any foreign jurisdiction, and upon the allowance of any such claim, he shall draw his warrant upon the state treasury therefor. And the state treasurer is hereby required to pay the same, out of any funds in the state treasury, not otherwise appropriated.

## GRAND JURY.

Criminal code penalties §8938.

**§9232. Challenges to the Panel.** §977. Challenges to the panel of grand jurors shall be allowed to any person in custody or held to answer for an offense, when the clerk has not drawn from the jury box the requisite number of ballots to constitute a grand jury, or when the drawing was not done in the presence of the proper officers; and such challenges shall be in writing and verified by affidavit and proved to the satisfaction of the court. L. '91 46.

Disclosure of proceedings, §8938; juror phy v. Superior Court 82 W. 284.  
acting after challenge, §8938.

Summoned only on order of superior court, Const., art 1, §26. Grand jury was discharged, crime was committed and jury re-summoned, held defendant not having objected before indictment could not object after indictment, *Blanton v. State* 1 W. 265.

**§9233. Challenges to Individuals.** §978.—215. Challenges to individual grand jurors may be made by such person for reason of want of qualification to sit as such juror; and when in the opinion of the court, a state of mind exists in the juror such as would render him unable to act impartially and without prejudice.



Objection not taken at impaneling is waived, *Clarke v. Territory*, 1 W. T. 68; *Blanton v. State*, 1 W. T. 265.

§9234. **Panel Discharged—Open Venire.** §979. If a challenge to the panel be allowed, the panel shall be discharged, and the court may order the sheriff to summon from the by-standers and the body of the county a sufficient number of persons to act as grand jurors. L. '91 46.

Court should terminate proceedings on jury—qualifications of jurors, *Yelm Jim* discovery of void impaneling of grand v. *Territory*, 1 W. T. 63; *Clarke v. Territory*, 1 W. T. 68.

§9235. **Talesmen.** §980.—217. If a challenge to an individual juror be allowed, he shall be discharged and the panel filled.

§9236. **Oath of Jurors.** §981. The following oath shall be administered to the grand jury: "You, as grand jurors for the body of the county of \_\_\_\_\_ do solemnly swear (or affirm) that you will diligently inquire into and true presentment make of all such matters and things as shall come to your knowledge, according to your charge; the counsel of the state, your own counsel, and that of your fellows, you shall keep secret; you shall present no person through envy, hatred, or malice; neither will you leave any person unpresented through fear, favor, affection, or reward, or the hope thereof; but that you will present things truly as they come to your knowledge, according to the best of your understanding, and according to the laws of this state. So help you God." L. '91 46.

§9237. **Foreman and Clerk.** §982.—219. A foreman of the grand jury shall be appointed by the court, who may remove him and appoint another at any time, and such foreman shall have power to administer all oaths and affirmations to witnesses who shall appear before such grand jury, and the jury may appoint one of their number as clerk to keep a minute of their proceedings.

§9238. **Charge to Jury.** §983.—220. The grand jury shall be charged by the court as to the nature of their duties, and may at any reasonable time, ask the advice of the court as to any legal questions upon which they may desire information.

§9239. **Prosecuting Attorney to Attend.** §984. The prosecuting attorney shall attend on the grand jury for the purpose of examining witnesses and giving them such advice as they may ask. L. '91 46.

§9240. **Duty of Grand Jury.** §985. The grand jury shall inquire into the cases of parties in custody or under bail, charged with commission of offenses against the laws of this state and duly returned by a committing magistrate, or upon a complaint sworn to before an officer authorized to administer oaths and presented by the prosecuting attorney, or under the instructions of the court. L. '91 46.

Does not apply to cases in which information has been filed, *State v. Croney* 31 W. 122.

§9241. **Presentment.** §986.—223. If a member of a grand jury knows, or has reason to believe, that a public offense, triable within the county, has been committed, he must declare the same to his fellow jurors who may thereupon investigate the same, if a majority so order.

Procedure on presentment §9250.

§9242. **Complainant Incompetent.** §987.—224. No complainant who may institute a prosecution shall be competent to be present at the deliberations of a grand jury or vote for the finding of an indictment.

§9243. **Malicious Indictments—Costs.** §987.—225. Where a grand jury ignore a bill of indictment, they shall also find whether the prosecution is malicious and frivolous, and find whether the complainant or county shall pay the costs, which shall be returned with their proceedings into open court.

§9244. **Jury Shall Examine Jails and Conduct of Public Officers.** §988.—226. The grand jury shall especially inquire as to the offense of any person, confined in prison on a criminal charge; into the condition and

mismanagement of the public prisons, in the county; into the willful misconduct in office of public officers, and shall in their discretion examine the public records of the county.

§9245. **Defendant Not to Be Heard.** §989.—227. The grand jury are not bound to hear evidence for the defendant; but it is their duty to weigh all the evidence submitted to them, and when they have reason to believe that other evidence within their reach will explain away the charge, they should order such evidence to be produced, and for that purpose may cause process to issue for the witnesses.

§9246. **Twelve Jurors Must Concur.** §990.—228. No indictment shall be found unless twelve grand jurors vote for the finding thereof.

Twelve must concur §9249.

§9247. **Proceedings Secret.** §991.—229. No grand jury shall disclose the fact that an indictment for a felony has been found against any person not in custody or under recognizance, until such person has been arrested.

§9248. **Jurors Privileged.** §992.—230. No grand juror shall be allowed to state or to testify in any court in what manner he, or any member of the jury, voted on any question before them, or what opinion was expressed by any juror in relation to such question, or what question was before them; and in charging the grand jury the court shall remind them of the provisions of this and the preceding sections.

## INDICTMENT.

Presentment, duty to make §9241.

§9249. **Twelve Jurors Must Concur.** §994.—232. An indictment cannot be found without the concurrence of at least twelve grand jurors, and when so found, it must be endorsed "a true bill," and such endorsement signed by the foreman of the jury.

Twelve must concur §9246.

affidavit of accused, State v. Hyde 22 W. 551

Indictment and information, §9266; information, §9257.

Offenses committed under territory defendant entitled to grand jury, McCarty v.

Presumption that grand jury does its duty is not overthrown by unsupported State 1 W. 377; but see Lybarger v. State 2 W. 552.

§9250. **Indorsement of Witnesses—Copies.** §995.—233. When an indictment is found, the names of the witnesses examined before the grand jury must be inserted at the foot of the indictment or endorsed thereon before it is presented to the court. And the clerk of the court must, within one day after demand made, furnish the defendant or his counsel a copy thereof without charge, or permit the defendant's counsel, or the clerk of such counsel, to take a copy.

Indorsement of witnesses on information, §9258.

be endorsed on the indictment as witness State v. Kulbe, 67 W. 21.

Where accused voluntarily appears before the grand jury, his name need not

Defendant asked subpoena for witnesses and state allowed to indorse further witnesses, State v. Gray 61 W. 549.

§9251. **Name of Private Prosecutor to Be Indorsed—Costs.** §996.—234. When an indictment is found at the instance of a private prosecutor, the following must be added to the endorsement required by the preceding section, "found at the instance of," (here state the name of the person) and in such case, if the prosecution fails, the court trying the cause, may award costs against the private prosecutor, if satisfied, from all circumstances, that the prosecution was malicious or without probable cause.

Jury may not award costs, In re Permstick 3 W. 672.

Witnesses indorsed in murder case after jury sworn, State v. Pepoon 62 W. 635.

§9252. **Presentment and Filing—Secrecy.** §997.—235. An indictment, when found by the grand jury must be presented by their foreman, in their presence to the court, and filed by the clerk, and remain in his office as a public record; but if the defendant has not been held to answer the



charge, neither the indictment or any order or process in relation thereto, must be inspected by any person other than the judge of the court or an officer thereof in the discharge of a duty concerning the same, until after the arrest, of the defendant.

**§9253. Indictment Shall Not Be Disclosed. §998.—236.** No grand juror or officer of the court must disclose any fact concerning such indictment while it is not subject to public inspection; and a violation of this section, or the foregoing section, is punishable as a contempt.

Witnesses in rebuttal need not be indorsed. *State v. Champoux* 33 W. 339.

**§9254. Not a True Bill—Procedure. §999.—237.** When a person has been held to answer a criminal charge, and the indictment in relation thereto, is not found "a true bill," it must be endorsed "not a true bill," which endorsement must be signed by the foreman, and presented to the court, and filed with the clerk, and remain a public record; but in the case of an indictment not found "a true bill," against a person not so held, the same, together with the minutes of the evidence in relation thereto, must be destroyed by the grand jury.

**§9255. Discharge if Not a True Bill. §1000.** When an indictment indorsed "not a true bill" has been presented in court and filed, the effect thereof is to dismiss the charge; and the same cannot be again submitted to or inquired of by the grand jury, or made the cause of an information, unless the court so order. L. '91 46.

**§9256. Presentment. §1001.** A presentment is an informal statement of facts, for the purpose of obtaining the advice of the court as to the law thereon. It is made by the foreman, in the presence of the grand jury, and with the concurrence of twelve of their number. A presentment is not to be filed in court, or preserved beyond the sitting of the grand jury. L. '91 46.

Indictment, §9249. Indictment and information, §9266.

Offense may be prosecuted by, Const., art 1, §25.

Session means actual sitting—plea to information waives right to object *State v. Strange* 50 W. 321.

Caption of information "State of Washington against" is sufficient, *State v. Devine* 6 W. 587.

Facts to warrant information need not be alleged, *State v. Boyce* 24 W. 514.

Omission of defendant's name from first part of information is cured by name in another part, *State v. Maldonado* 21 W. 653.

Exact date need not be alleged as of horse stealing, *State v. Gottfreedson* 24 W. 398.

Objection that charge should be by indictment rather than information as grand jury in session should be raised before plea, *State v. Anderson* 20 W. 193.

Information is authorized when defendant is in custody and court is in session and grand jury is not, *State v. Nelson* 13 W. 523.

Information need not allege that no grand jury is in session and that defendant has been committed by magistrate, *State v. Lewis* 31 W. 515.

Superior court presumed to have jurisdiction and facts need not be alleged, *State v. Melvern* 32 W. 7.

Defects of complaint before committing magistrate do not affect information, *State v. Newton* 29 W. 373.

Failure to indicate crime in charging part is cured by statement of facts follow-

ing showing crime, *State v. Costello* 29 W. 366.

Deputy prosecuting attorney may verify information, *Hammond v. State* 3 W. 171.

"Knowingly" charges knowledge, *State v. Ulsemer* 24 W. 657; *State v. De Paoli* 24 W. 71.

Information as to time and place of embezzlement sustained, *State v. Hoshor* 26 W. 643.

Information charging larceny from two persons and failing to allege same time and place is bad for duplicity, *State v. Bliss* 27 W. 463.

As in felonies grounds for information need not be given in misdemeanors, *State v. De Paoli* 24 W. 71.

Charging included offense is not charging more than one crime, *State v. McCormick* 20 W. 95; *State v. Michel* 19 W. 162.

Words of statute not necessary if words of like import used, *State v. Bohn* 19 W. 36; *State v. Young* 22 W. 273.

"Maliciously" is sufficient allegation of malicious intent, *State v. Michel* 20 W. 162.

Preliminary examination not necessary, *State v. McGilvery* 20 W. 240.

Preliminary examination not necessary before information, *State v. Williams* 13 W. 335.

Information charging incest without charging intent held sufficient, *State v. McGilvery* 20 W. 240.

Information charging consummated assault and further alleging present ability latter rejected as surplusage, *State v. Bohn* 19 W. 36.

Information against Indians, notes to §9393.

Information need not follow commitment as to crime charged, *State v. Myers* 8 W. 177.

It is in the discretion of the court to permit information to be withdrawn and another filed, *State v. Gill* 8 W. 12.

Useless averments do not destroy those necessary, *State v. Ackles* 8 W. 462.

Information may be founded on examination of justice though another justice has dismissed without examination, *State v. Nordstrom* 7 W. 506.

Information need not allege how defendant is held, *State v. Anderson* 5 W.

350; *State v. Munson* 7 W. 239.

Charge of stealing of property of two persons at same place and time sustained, *Territory v. Heywood* 2 W. T. 180.

Statutory crimes should be set out in terms of statute, but words of same import may be used—common law indictment insufficient, *Leschi v. Territory* 1 W. T. 14; *Watts v. Territory* 1 W. T. 409; *Leonard v. Territory* 2 W. T. 381; *Zimmerman v. Territory* 3 W. T. 445.

Is due process of law though preliminary examination is not required. In re *Humason* 46 Fed. Rep. 388.

## INFORMATION.

**Supplementary—AN ACT to provide for prosecuting public offenses on information.** Approved January 29, 1890. Laws '90 p 101.

**§9257. Prosecution by Information.** §1. All public offenses may be prosecuted in the superior courts by information. L. '09 186.

**§9258. Filing of Information—Witnesses to Be Indorsed.** §2. All informations shall be filed in the court having jurisdiction of the offense specified therein, by the prosecuting attorney of the proper county as informant; he shall subscribe his name thereto and endorse thereon the names of the witnesses known to him at the time of filing the same, and at such time before the trial of any case as the court may by rule or otherwise prescribe, he shall endorse thereon the names of such other witnesses as shall then be known to him; and said court shall possess and may exercise the same powers and jurisdiction to hear, try and determine all such prosecutions upon information, to issue writs and process, and do all other acts therein as it possesses and may exercise in cases of like prosecutions upon indictments.

Indorsement of witnesses on indictment, §9250.

Witnesses indorsed one day before trial is ground for continuance, *State v. McCaskey* 97 W. 401.

Alias names not fatal if defendant not misled, *State v. Crane* 88 W. 210.

Accused is not "witness," *State v. Kulbe*, 67 W. 21.

Names may be indorsed at trial—continuance *State v. Le Pitre* 54 W. 166.

Witness may be indorsed at trial—continuance, *State v. Carpenter* 56 W. 670.

Allowing witness not indorsed to testify is discretionary, *State v. Sexton* 37 W. 110.

State may indorse witnesses the day before the trial, *State v. Van Waters* 36 W. 358.

Information verified by deputy is good, *State v. Riddell*, 33 W. 324.

Witness in rebuttal not indorsed and no continuance asked is harmless error, *State v. Regan* 8 W. 506.

Witnesses may be indorsed during the selection of jury, *State v. Lee Doon* 7 W. 308.

Indorsement of witnesses shortly before trial is in discretion of the court, *State v. Holmes* 12 W. 169.

Misspelling of witnesses' names will not be ground of continuance or error, *State v. Everett* 14 W. 574.

Names of witnesses not endorsed but written in body of information is sufficient, *State v. McGonigle* 14 W. 594.

Witnesses may be indorsed up to time jury is sworn, *State v. Lewis* 31 W. 515.

If evidence of witnesses not indorsed is taken defendant may have continuance, objection to evidence will not avail, *State v. Hunter* 18 W. 670; *State v. John Port Townsend* 7 W. 462.

Witnesses necessary in rebuttal need not be endorsed, *State v. Phelps* 22 W. 181.

Court may permit witnesses to be indorsed during trial but defendant entitled to continuance to get evidence if necessary, *State v. Bokien* 14 W. 403; *State v. Holedger* 15 W. 443.

Notice only is necessary of additional witnesses indorsed new copies not required, *State v. Nordstrom* 7 W. 506.

**§9259. Verification—Certainty in Pleadings.** §3. All informations shall be verified by the oath of the prosecuting attorney, complainant, or some other person, and the offenses charged therein shall be stated with the same fullness and precision in matters of substance as is required in indictments in like cases. Different offenses and different degrees of the same offense may be joined in one information, in all cases where the same might by different counts in one indictment, and in all cases a defendant or defendants shall have the same rights as to proceedings therein as he or they would have if prosecuted for the same offense upon an indictment.



Verification of information, §9264.

Verification by deputy prosecuting attorney sufficient, State v. Hewitt 103 W. 52.

Amended information must be verified, State v. Van Cleve, 5 W. 642.

Verification by deputy sufficient, Hammond v. State, 3 W. 171.

Verification as affiant "verily believes" sufficient, State v. Cronin, 20 W. 512.

**§9260. Territorial Laws in Force.** §4. That the provisions of the criminal code of the late territory now in force in this state in relation to prosecutions, crimes and misdemeanors on indictments, and all other provisions of law applying to prosecutions upon indictments, to writs and process therein, and the issuing and service thereof, to motions, pleadings, trials and punishment, or the execution of any sentence, and to all other proceedings in cases of indictment, whether in the court of original or appellate jurisdiction, shall, in the same manner, and to the same extent as near as may be apply to information, and all prosecutions and proceedings thereon.

State laws continuation of territorial laws §9197.

**§9261. Commitment on Information.** §5. Any person who may according to law be committed to jail, or become recognized, or held to bail with sureties for his appearance in court, to answer to any indictment, may in like manner so be committed to jail or become recognized and held to bail for his appearance to answer to any information or indictment, as the case may be.

**§9262. Preliminary Examinations.** §6. It shall be the duty of the prosecuting attorney of the proper county to inquire into and make full examination of all the facts and circumstances connected with any case of preliminary examination, as provided by law, touching the commission of any offense wherein the offender shall be committed to jail, or become recognized or held to bail, and if the prosecuting attorney shall determine in any such case that an information ought not to be filed, he shall make, subscribe and file with the clerk of the court a statement in writing containing his reasons in fact and in law for not filing an information in such case, and that such statement shall be filed at and during the session of court at which the offender shall be held for his appearance: Provided, That in such case such court may examine such statement, together with the evidence filed in the case, and if upon such examination the court shall not be satisfied with such statement, the prosecuting attorney shall be directed by the court to file the proper information and bring the case to trial.

**§9263. Grand Jury Only on Order of Court.** §7. Grand juries shall not hereafter be drawn, summoned or required to attend at the sittings of any court within this state unless the judge thereof shall so direct by writing under his hand, and filed with the clerk of court.

This section supplements constitution. Const., art. 1, §26.

**§9264. Verification of Information.** §18. All informations shall be verified by the oath of the prosecuting attorney, complainant, or some other person. L. '91 46.

Compare later section, §9259.

Where defendant waives reading of an amended information and enters plea without objecting to its lack of verification, he waives such objection, State v. Stone, 66 W. 625.

Verification as informant "verily believes" is sufficient, State v. Cronin 20 W. 512.

Handing letters and newspapers to jurors without consent of defendant although they contain no matter referring to case is error, State v. McCormick 20 W. 94.

Deputy clerk may sign verification in his own name or that of his principal by himself as deputy, State v. Rosner 8 W. 42.

**§9265. Motion to Set Aside Information.** §51. A motion to set aside an information can be made by the defendant on one or more of the following grounds, and must be sustained:

1. When it is not signed by the prosecuting attorney.

2. When it is not verified.

3. When it has not been marked "filed" by the clerk.

4. When the names of the witnesses are not indorsed upon it as required by [§9258] section eleven hundred and sixty-three of this code. L. '91 46. /

Information amended to supply verification, State v. Haffer 94 W. 136.

## INDICTMENT AND INFORMATION.

§9266. **All Forms Abolished.** §1002.—240. All the forms of pleading in criminal actions, heretofore existing, are abolished; and hereafter, the forms of pleading, and the rules by which the sufficiency of pleadings is to be determined, are those prescribed herein.

Indictment, §9249.

arson etc. with resulting murder—no particulars, State v. Fillpot 51 W. 223.

§9267. **First Pleading.** §1003. The first pleading on the part of the state is the indictment or information. L. '91 46.

Motion to set aside indictment, §9153; Receiving stolen goods charged in the information, §9265; demurrer, §9158; pleas, language of §8944 sufficient, State v. Martin 94 W. 313.

§9161. Sufficiency of indictment or information, State is not required to anticipate defenses, State v. Seifert, 65 W. 596.

§9268. **What Indictment or Information Must Contain.** §1004. The indictment or information must contain—1. The title of the action, specifying the name of the court to which the indictment or information is presented, and the names of the parties. 2. A statement of the acts constituting the offense, in ordinary and concise language, without repetition, and in such manner as to enable a person of common understanding to know what is intended. L. '91 46.

Specific earnings need not be alleged in crime of accepting earnings of a prostitute—"wilfully and unlawfully" charges intent, State v. Schuman 89 W. 9.

Court takes judicial notice that Seattle is in King County, Schilling v. Territory, 2 W. T. 283; State v. Fetterly, 33 W. 499; or that a day named was Sunday, State v. Bergfeldt, 41 W. 234.

An information from which defendant can readily understand the offense charged is sufficient, State v. Garland, 65 W. 666.

Indictment sustained, State v. Quinn 56 W. 295.

Information sufficiently shows prosecution in name of state by caption, State v. Devine, 6 W. 587.

Description of horses held sufficient, State v. Shuck 38 W. 270.

Indictment is plain statement of facts, State v. Womack, 4 W. 19.

Omission of defendant's name from charging part is not fatal, Whicher v. State 2 W. 286. Cited 75 W. 5.

**Form of Indictment.** §1005. The indictment may be substantially in the following form:

THE STATE OF WASHINGTON V. A—— B——.

Superior Court of the State of Washington, for the county of——.

A. B. is accused by the grand jury of the ——, by this indictment, of the crime of (here insert the name of the crime, if it have one, such as treason, murder, arson, manslaughter, or the like; or if it be a crime having no general name, such as libel, assault and battery, and the like, insert a brief description of it as given by law), committed as follows:

The said A. B. on the —— day of ——, 18——, in the county of ——, aforesaid, (here set forth the act charged as a crime.)

Dated at ——, in the county aforesaid, the —— day of —— A. D. 18——.

(Signed)

C. D., Prosecuting Attorney.

(Indorsed) A true bill.

(Signed) E. F., Foreman of the Grand Jury. L. '91 46.

§9270. **Certainty Required.** §1006. The indictment or information must be direct and certain as it regards:

1. The party charged;

2. The crime charged; and

3. The particular circumstances of the crime charged, when they are necessary to constitute a complete crime. L. '91 46.

Charge of larceny by "aid or color" and bailment not double—"or" in statute may be "and" in information, State v. Pettit 74 W. 510.

charge class of crime is not certain, State v. Smith 85 W. 352.

Information held to charge three crimes, State v. Dodd 84 W. 436.

"For hire" necessary in charging prostitute under ordinance so providing, State v. Bryant 90 W. 20.

Information for false arrest that does not

Charging five offenses under prohibition statute held duplicitous, Seattle v. Molin 99 W. 210.



**§9271. Defendant By Fictitious Name. §1007.** When a defendant is designated in the indictment or information by a fictitious or erroneous name, and in any stage of the proceedings his true name is discovered, it may be inserted in the subsequent proceedings, referring to the fact of his being indicted or informed against by the name mentioned in the indictment or information. L. '91 46.

Shall be interrogated when arraigned, §9171; proceeding in two names, §9172.

**§9272. Single Charge. §1008.** The indictment or information must charge but one crime, and in one form only, except that where the crime may be committed by use of different means, the indictment or information may allege the means in the alternative. L. '91 46.

Information for false arrest that does not state class of crime is double, State v. Smith 85 W. 352.

Information charging husband with putting his wife in house of prostitution held a charge of three crimes, State v. Dodd 84 W. 436.

Charge of larceny by "aid or color" and bailment not double—"or" in statute may be "and" in information, State v. Pettit 74 W. 510.

Charge of sale of liquor to four minors not duplications, State v. McCormick 56 W. 469.

Larceny from two persons at the same time is one crime (overruling 27 W. 463), State v. Laws 61 W. 533.

Several means designated in statute may be charged without duplicity, State v. Adams 41 W. 552.

Statute enumerating a series of acts, information following statute is not double, State v. Ilomaki 40 W. 629.

Objection for duplicity cannot be made in first instance on appeal, State v. Snider 32 W. 299.

Charging five offenses under prohibition law fatal, Seattle v. Molin 99 W. 210.

**§9273. Allegation of Time. §1009.** The precise time at which the crime was committed need not be stated in the indictment or information; but it may be alleged to have been committed at any time before the finding of the indictment or the filing of the information, and within the time in which an action may be commenced therefor, except where the time is a material ingredient in the crime. L. '91 46.

Instruction withdrawing precise time from jury, defendant seeking to prove alibi, is error, State v. Morden 87 W. 465.

When election is made between several acts conviction only on one chosen, State v. Moss 73 W. 430.

"On or about" certain date sufficient, State v. Williams, 13 W. 335.

Charge of rape on a certain day "with-

in three years", sufficient—variance in name—complaints by child as evidence, State v. Myrberg 56 W. 384.

Though specific time alleged, other may be proven, State v. Osborne 39 W. 548.

Particular day charged need not be proven but any time within the time limited by law may be shown, State v. Anderson 30 W. 14.

**§9274. Certainty as to Persons. §1010.—348.** When the crime involves the commission of, or an attempt to commit a private injury, and is described with sufficient certainty in other respects to identify the act, an erroneous allegation as to the person injured or intended to be injured is not material.

Charge of forgery need not name person defrauded, State v. Thomas 102 W. 564.

Error in name immaterial where defendant not mislead, State v. Ewing, 67 W. 395.

In charge for employing female illegal-

ly need not name female so employed, State v. Considine, 16 W. 358.

Name of depositor necessary in deposit in insolvent bank—allegation that depositor was corporation and proof of co-partnership a fatal variance, State v. Olson 35 W. 149.

**§9275 Certainty in Allegations of Title to Property. §963.—200.** In the prosecution of any offense committed upon, or in relation to, or in any way affecting any real estate, or any offense committed in stealing, embezzling, destroying, injuring, or fraudulently receiving or concealing any money, goods, or other personal estate, it shall be sufficient and shall not be deemed a variance, if it be proved on trial that at the time when such offense was committed either the actual or constructive possession, or the general or special property in the whole, or any part of such real or personal estate was in the person or community alleged in the indictment or other accusation to be the owner thereof.

This section applies to the crime of robbery, State v. Fair 35 W. 127.

Is answer that money taken acquired by gambling a defense? State v. Smith 40 W. 642.

Information for larceny of horses of Wm. Burbank "Walter" cannot be substituted for "Wm.," State v. Van Cleve 5 W. 642.

**§9276. "Person" Defined.** §964.—201. When the term "person" or other word is used, to designate the party whose property is the subject of an offense, or against whom any act is done, with intent to defraud or injure, the term may be construed to include the United States, this state, or any state or territory or any public or private corporation as well as an individual.

**§9277. Number and Sex.** §965.—202. Every term in this act implying one only, shall, when required, be construed to mean two or more, and any term implying two or more, shall also be construed to mean, when required, but one, except in cases where two or more are necessary to constitute the offense and every term implying sex, shall, when necessary, be construed to mean both or either.

**§9278. Description of Animals.** §1011. When a crime involves the taking of or injury to an animal, the indictment or information is sufficiently certain in that respect if it describes the animal by the common name of its class.

**§9279. Construction of Words.** §1012. The words used in an indictment or information must be construed in their usual acceptation, in common language, except words and phrases defined by law, which are to be construed according to their legal meaning. L. '91 46.

**§9280. Words of Statute Need Not Be Followed.** §1013. Words used in a statute to define a crime need not be strictly pursued in the indictment or information, but other words, conveying the same meaning, may be used. L. '91 46.

"Malicious" supplied by "of his premeditated malice," State v. Acles, 8 W. 462.

Substantially in statutory language sufficient, State v. Knowlton, 11 W. 512; State v. Turner, 10 W. 94; State v. Fetterly, 33 W. 599.

Dam used for "agricultural" purposes sufficiently alleges "irrigation" purposes, State v. Tiffany, 44 W. 602.

Need not charge same crime as that for which accused was committed upon preliminary examination, State v. Myers, 8 W. 177.

May charge several crimes constituting one offense, State v. Holedger, 15 W. 443; State v. Elswood, 15 W. 453.

Statute prescribes "willfully or maliciously," charge of "maliciously" alone sufficient, State v. Tiffany, 44 W. 602.

Useless allegations do not invalidate, State v. Acles, 8 W. 462.

"Willful" commission of act does not imply that it was done knowingly, State v. Zenner, 35 W. 249.

Need not set out conditions the law prescribes, State v. Munson, 7 W. 239; see Leschi v. Territory, 1 W. T. 13.

Information which omits name of defendant in charging part but names him in accusing part sufficient, Witcher v. State, 2 W. 286.

Information sufficient if man of common understanding can determine with what he is charged, State v. Nelson, 39 W. 221; State v. Davis, 43 W. 116.

Information amendable on leave of court to which case transferred, State v. Lyts, 25 W. 347.

**Arson:** Need not allege that dwelling house was place of abode of any person, McClaine v. Territory, 1 W. 345; see State v. Biles, 6 W. 186.

**Assault:** Must set forth acts constituting, Watson v. State, 2 W. 504.

"Personal injury" sufficient where statute prescribes "bodily injury," State v. Clayborne, 14 W. 622.

**Burglary:** Charge of grand larceny by breaking into and entering office sufficient State v. Sufferin, 6 W. 107; State v. Miller, 3 W. 131.

**Conspiracy:** Indictment charging crime as at common law sufficient, Bradshaw v. Territory, 3 W. T. 265.

**Embezzlement:** Must charge that conversion took place in county, State v. Mayberry, 9 W. 194.

**False Pretenses:** Need not set out time, character or denomination of money obtained, State v. Knowlton, 11 W. 512.

Sufficient if it shows parting with property through false representations, State v. Bokien, 14 W. 403.

**Forgery:** Need not set forth copy of forged instrument, State v. Wright, 9 W. 96. See White v. Territory, 1 W. 279.

**Gaming:** Alleging gambling game by name without description insufficient, Harland v. Territory, 3 W. T. 132.

Charge against proprietor need not allege with whom game played, State v. Wilson, 9 W. 16.

**Larceny:** Need not allege in whose possession property was, State v. Coss, 12 W. 673.

Where name of owner alleged it is material allegation, State v. Van Cleve, 5 W. 642.

Need not allege value of each of several articles, State v. Brew, 4 W. 95, but see, McCarty v. State, 1 W. 377.

Surplusage does not invalidate, State v. Kyle, 14 W. 550.

**Murder—Manslaughter:** Jury may determine degree, Leschi v. Territory, 1 W.



T. 13.

General intent to kill sufficient, State v. Barr, 11 W. 482.

Need not allege act was unlawful, felonious or malicious, State v. Nordstrom, 7 W. 506; Schilling v Territory, 2 W. T. 283.

Knife presumed to be deadly instrument, State v. Regan, 8 W. 506.

Must allege killing done purposely etc.,

State v. Ge, 1 W. 275, State v. Me, 1 W. 276.

Failure to allege killing was willfully or violently done charges involuntary manslaughter, State v. Gile, 8 W. 12.

Sufficiency of charge against doctor for killing by starvation, State v. McFadden, 48 W. 259.

Perjury: Must describe proceedings at which perjury committed, State v. See, 4 W. 344.

§9281. Sufficiency of Indictment or Information. §1014. The indictment or information is sufficient if it can be understood therefrom,

1. That it is entitled in a court having authority to receive.

2. That it was found by a grand jury of the county in which the court was held.

3. That the defendant is named, or if his name cannot be discovered, that he is described by a fictitious name, with the statement that his real name is to the jury unknown.

4. That the crime was committed within the jurisdiction of the court, except where, as provided by law, the act, though done without the county in which the court is held, is triable therein.

5. That the crime was committed at some time previous to the finding of the indictment, or filing of the information, and within the time limited by law for the commencement of an action therefor.

6. That the act or omission charged as the crime is clearly and distinctly set forth, in ordinary and concise language, without repetition, and in such a manner as to enable a person of common understanding to know what is intended.

7. The act or omission charged as the crime is stated with such a degree of certainty as to enable the court to pronounce judgment upon a conviction, according to the rights of the case. L. '91 46.

Information attacked for indefiniteness and inaccuracy sustained, State v. Millroy 103 W. 193.

Charge of forgery need not name person defrauded, State v. Thomas 102 W. 564.

Allegation that defendant "killed" is sufficient allegation that deceased died, State v. Phillips 59 W. 252.

Must include every item of property proved, State v. Smith 60 W. 399.

Held to warrant double charge in rape, arson etc. resulting in murder—no particulars State v. Fillpot 51 W. 223.

No bill of particulars, no motion to make more definite and certain remedy is by demurrer, State v. Bogardus 36 W. 297.

Indictment for nuisance not charging crime within time limited by law is bad, State v. Schaffer 31 W. 305.

Cited 75 W. 5.

§9282. Defects Not to Invalidate. §1015. No indictment or information is insufficient, nor can the trial, judgment, or other proceedings thereon be affected, by reason of any of the following matters, which were formerly deemed defects or imperfections:

1. For want of an allegation of the time or place of any material fact, when the time and place have been once stated.

2. For the omission of any of the following allegations, namely: "With force and arms," "contrary to the form of the statute or the statutes," or "against the peace and dignity of the state."

3. For the omission to allege that the grand jury was impaneled, sworn, or charged.

4. For any surplusage or repugnant allegation, or for any repetition, when there is sufficient matter alleged to indicate clearly the offense and the person charged. Nor

5. For any other matter which was formerly deemed a defect or imperfection, but which does not tend to the prejudice of the substantial rights of the defendant upon the merits. L. '91 46.

Indictment or information must contain §9268; must be set aside on certain grounds—information, §9265; indictment, §9153.

Receiving stolen goods charged in the language of the statute sufficient, State v. Martin 94 W. 313.

Jurat signed by deputy clerk sufficient, State v. Clark 58 W. 128.

**§9283. Law and Certain Facts Not to Be Pleaded.** §1016. Neither presumptions of law nor matter of which judicial notice is taken, need be stated in an indictment or information. L. '91 46.

**§9284. Pleading Judgment of Special Court or Officer.** §1017. In pleading a judgment or other determination of or proceeding before a court or officer of special jurisdiction, it is not necessary to state in the indictment or information the facts conferring jurisdiction; but the judgment, determination, or proceeding may be stated to have been duly given or made. The facts conferring jurisdiction, however, must be established on the trial. L. '91 46.

**§9285. Pleading Private Statute.** §1018. In pleading a private statute, or right derived therefrom, it is sufficient to refer, in the indictment or information, to the statute by its title and the day of its passage, and the court must thereupon take judicial notice thereof. L. '91 46.

**§9286. Pleading Libel.** §1019. An indictment or information for libel need not set forth any extrinsic facts, for the purpose of showing the application to the party libeled, of the defamatory matter on which the indictment or information is founded; but it is sufficient to state generally that the same was published concerning him; and the fact that it was so published must be established on the trial. L. '91 46.

**§9287. Variance in Forgery.** §1020. When an instrument which is the subject of an indictment or information for forgery has been destroyed or withheld by the act or procurement of the defendant, and the fact of the destruction or withholding is alleged in the indictment or information, and established on the trial, the misdescription of the instrument is immaterial. L. '91 46.

discharge—evidence of an accomplice must be clear and corroborated to be sufficient. Defendant not on trial may be made a witness against co-defendant before his discharge. *Edwards v. State* 2 W. 291.

**§9288. Pleading Perjury.** §1021. In an indictment or information for perjury, or subornation of perjury, it is sufficient to set forth the substance of the controversy or matter in respect to which the crime was committed, and in what court or before whom the oath alleged to be false was taken, and that the court or person before whom it was taken had authority to administer it, with proper allegations of the falsity of the matter on which the perjury is assigned; but the indictment or information need not set forth the pleadings, record, or proceedings with which the oath is connected, nor the commission or authority of the court or person before whom the perjury was committed. L. '91 46.

oath and materiality of evidence held sufficient, *State v. Douette* 31 W. 6.

**§9289. Conviction or Acquittal on Joint Charge.** §1022. Upon an indictment or information against several defendants, any one or more may be convicted or acquitted. L. '91 46.

**§9290. Pleading Description of Money.** §1023. In an indictment or information for larceny or embezzlement of money, bank notes, certificates of stock, or valuable securities, or for a conspiracy to cheat or defraud a person of any such property, it is sufficient to allege the larceny or embezzlement, or the conspiracy to cheat and defraud, to be of money, bank notes, certificates of stock, or valuable securities, without specifying the coin, number, denomination, or kind thereof. L. '91 46.

scribed, *State v. Palmer* 20 W. 207. "A quantity of money of the value of seventy-seven dollars" is sufficient especially after verdict, *State v. Henshaw* 3 W. 12.

In robbery it is only necessary to designate as "lawful money," *State v. Johnson* 19 W. 410.

Proof of Canadian bills under charge of lawful money of the United States is variance *State v. Phillips* 27 W. 364.

Description of money held sufficient and testimony describing with particularity held not to be variance, *State v. Burns* 19 W. 52.

**§9291. Pleading Obscenity of Literature.** §1024. An indictment or information for exhibiting, publishing, passing, selling, or offering to sell, or having in possession with such intent, any lewd or obscene book, pamphlet, picture, print, card, paper, or writing, need not set forth any portion of the language used or figures shown upon such book, pamphlet, picture, print, card, paper, or writing, but it is sufficient to state generally the fact of the lewdness or obscenity thereof. L. '91 46.



**§9292. Pleading Ownership of Domestic Animals.** §1025. In prosecutions under the provisions of the penal code, sections fifty-two, sixty and ninety-one [§9131-35] where the owner of the property is unknown, such property shall, for the purpose of this code be deemed and held to be owned by the State of Washington; and in all cases where the indictment or information alleges the state to be the owner of such property, and the proof on the trial discloses the name of the actual owner, it shall not be deemed a variance, or failure of proof, unless the defendant is the actual owner L. '91 46.

Sections 1615 Pierces Code 1905, Code and refer to larceny and altering defined larceny and 1624 crime of altering mark or brand of domestic animals. These ing marks etc., on domestic animals sections have been repealed and substituted as Bal. Code, §§7113, 7125, 8739; substituted by §§8791, 8944. substituted as to larceny, §8944.

Allegation and proof of ownership if unknown, State v. Eddy 46 W. 494. The sections referred to are in Hill's

## INSANE.

**AN ACT** relating to the criminal insane, their trial, commitment and custody. Approved February 21, 1907. Laws '07 p 33.

**§9293. Criminal Insane Defined.** §1. Any person who shall have committed a crime while insane, or in a condition of mental irresponsibility, and in whom such insanity or mental irresponsibility continues to exist, shall be deemed criminally insane within the meaning of this act. No condition of mind induced by the voluntary act of a person charged with a crime shall be deemed mental irresponsibility within the meaning of this act.

Hospitals for insane and commitment in commitment—errors, how reviewed, §§2814, 2831. State v. Tenney, 63 W. 486.

Insane prisoners, §8718; insanity as defense, §8694. Act applies to all criminal insane—is not ex post facto, State ex rel. Thompson

Judgment cannot be vacated for errors v. Snell 49 W. 177.

**§9294. Plea of Insanity.** §2. When it is desired to interpose the defense of insanity or mental irresponsibility on behalf of one charged with a crime, the defendant, his counsel, or other person authorized by law to appear and act for him, shall at the time of pleading to the information or indictment file a plea in writing in addition to the plea or pleas required or permitted by other laws than this, setting up (1) his insanity or mental irresponsibility at the time of the commission of the crime charged, and (2) whether the insanity or mental irresponsibility still exists, or (3) whether the defendant has become sane or mentally responsible between the time of the commission of the crime and the time of the trial. The plea may be interposed at any time thereafter, before the submission of the cause to the jury, if it be proven that the insanity or mental irresponsibility of the defendant at the time of the crime was not before known to any person authorized to interpose a plea.

Court observing defendant on trial may in discretion order commission on sanity, State v. Peterson 90 W. 479.

Showing of insanity without pleading it not a defense, State v. Gounagias 88 W. 304.

Where accused filed no plea of insanity before the case was submitted to the jury the question was waived, State v. Wilson, 69 W. 235.

Withdrawal of plea does not affect other pleas, State v. Quinn 56 W. 295.

**§9295. Verdict.** §3. If the plea of insanity or mental irresponsibility be interposed, and evidence upon that issue be given, the court shall instruct the jury when giving the charge, that in case a verdict of acquittal of the crime charged be returned, they shall also return special verdicts finding (1) whether the defendant committed the crime, and if so, (2) whether they acquit him because of his insanity or mental irresponsibility at the time of its commission, (3) whether the insanity or mental irresponsibility continues and exists at the time of the trial, and (4) whether, if such condition of insanity or mental irresponsibility does not exist at the time of the trial, there is such likelihood of a relapse or recurrence of the insane or mental irresponsible condition, that the defendant is not a safe person to be at large. Forms for the return of the special verdicts shall be submitted to the jury with the forms for the general verdicts.

**§9296. Discharge—Commitment.** §4. If the jury find by their special verdicts that the defendant committed the crime charged, that he is acquitted because of his insanity or mental irresponsibility at the time of its commission, and that before the trial he has become a sane or mentally responsible person, and is not liable to a relapse or recurrence of the insane or mentally irresponsible condition, and is a safe person to be at large, he shall be discharged. If the jury find that the defendant committed the crime charged, that he is acquitted because of his insanity or mental irresponsibility at the time of its commission, and that the insanity or mental irresponsibility still exists, or, if it does not exist, that he is so liable to a relapse or recurrence of the insane or mentally irresponsible condition as to be an unsafe person to be at large, the court shall enter judgment in accordance therewith, and shall order the defendant committed as a criminally insane person until such time as he shall be discharged as hereinafter provided.

**§9297. Statement of Facts.** §5. Either party to the cause may have the evidence and all of the matters not of record in the cause made a part of the record by the certifying of a statement of facts or bill of exceptions as in other cases. If an appeal should be not taken, such statement of facts or bill of exceptions shall remain on file in the office of the clerk of the court where the cause was tried, and if an appeal be taken, the statement of facts or bill of exceptions shall be returned from the Supreme Court to the court where the cause was tried when the Supreme Court shall have rendered its final judgment in the cause.

**§9298. Application for Examination—Procedure—Appeal.** §6. When any person committed hereunder shall claim to have become sane or mentally responsible and to be free from danger of any relapse or recurrence of mental unsoundness and a safe person to be at large, he shall apply to the physician in charge of the criminal insane for an examination of his mental condition and fitness to be at large. If the physician shall certify to the warden that there is reasonable cause to believe that such person has become sane since his commitment and is a safe person to be at large, the warden shall permit him to present a petition to the court that committed him, setting up the facts leading to his commitment, and that he has since become sane and mentally responsible, and is in such condition that he is a safe person to be at large, and shall pray his discharge from custody. The petition shall be served upon the prosecuting attorney of the county, whose duty it shall be to resist the application. No other pleadings than the petition need be filed, and the court shall set the cause down for trial before a jury, and the trial shall proceed as in other cases. The sole issue to be tried in the case shall be whether the person petitioning for a discharge has, since his commitment, become a safe person to be at large, and the burden of proof shall be upon him. If the evidence given upon his trial upon the criminal charge shall have been preserved by statement of facts or bill of exceptions as hereinbefore provided, either party may read such parts of that record as may be desired as evidence upon the hearing. The jury shall be required to find whether the petitioner has become sane since his commitment, is not liable to a recurrence of the mental unsoundness or relapse, and is a safe person to be at large. If they so find, he shall be entitled to a discharge. If not, his petition shall be dismissed, and he shall be remitted to custody. Either party may appeal to the Supreme Court from the judgment discharging the petitioner or remitting him to custody, in the same manner that appeals in other cases are taken. The judgment of remission shall be conclusive that the petitioner is an unsafe person to be at large at the time of its entry; but if he shall subsequently claim to have become a sane and safe person to be at large, he may upon a certificate of probable cause by the attending physician, which shall show a change in his mental condition since the last trial, his present sanity and fitness to be at large, again petition for discharge, and the proceedings thereon shall be as hereinabove provided.

Procedure when change of venue, *State ex rel. Thompson v. Snell* 49 W. 177.



**§9299. Recommitment — Procedure.** §7. Should any criminally insane person discharged hereunder again become insane or mentally irresponsible, or be found to be an unsafe person to be at large because of mental unsoundness, the prosecuting attorney of the county from which he was committed may file a petition in the name of the State, setting up the facts leading to his commitment and subsequent discharge, and the relapse which is the basis of the petition. A warrant shall be issued for the defendant as in criminal cases, the defendant taken into custody, and the case tried to a jury, as in other cases provided herein; but the burden of proof, showing reasons for commitment, shall be upon the State. Should the jury find the defendant sane, and a safe person to be at large, he shall be discharged. Should they find that since his discharge he has suffered a relapse or recurrence of his mental unsoundness, and by reason thereof he is an unsafe person to be at large, the court shall issue an order remitting him to custody as criminally insane. The evidence given upon the former trial or trials, if preserved by statement of facts or bill of exceptions as hereinbefore prescribed, may be read upon such hearing, and either party may appeal to the Supreme Court as in other cases.

**§9300. Criminal Insane at Penitentiary.** §8. The authorities charged with the maintenance and conduct of the State penitentiary shall forthwith provide a ward or department in the State penitentiary wherein shall be confined persons committed as criminally insane persons under the provisions of this act. Such persons shall be under the custody and control of the warden of the penitentiary to the same extent that are other persons committed to his custody, but such provision shall be made for their control, care, and treatment as shall be proper in view of their derangement. Any person so committed shall not be discharged from the custody of the warden save upon the order of a court of competent jurisdiction made after a trial and judgment of discharge as herein provided. When any person so committed shall petition for a discharge, the warden of the penitentiary shall send him to the county where the hearing is to be had at the time the case shall be called for trial in the custody of a guard. During the time he shall be absent from the penitentiary, he shall be confined in the county jail, but shall at all times be deemed to be in the custody of the guard. If he shall be remitted to custody, the guard shall forthwith return him to the penitentiary. If he shall be discharged, the State may forthwith appeal from the order of discharge, and such appeal shall operate as a stay of the order and he shall remain in custody and be forthwith returned to the penitentiary until the Supreme Court shall have rendered a final decision in the cause. If the State does not desire to appeal, the order of discharge shall be a sufficient acquittal to the warden.

**§9301. Criminal Insane to Be Transferred.** §9. All the criminal insane now confined in the State hospitals for the insane shall be forthwith sent by the authorities of those hospitals to the State penitentiary and placed in the control of the warden and confined by him in the ward or department for the criminal insane, herein provided for, and shall not thereafter be discharged from his custody save in the manner herein provided. Any criminally insane person now confined in the State penitentiary shall be transferred to the ward for the criminally insane, and shall not be discharged, save as herein provided.

**§9302. Commitment of Persons Not in Custody—Procedure.** §10. The prosecuting attorney of any county wherein a person may have been acquitted of a crime because of his insanity or mental irresponsibility may cause any such person who is not in custody to be brought before the superior court of that county for trial as to the question of his sanity or mental responsibility by filing a petition in the name of the State setting up the commission of a crime by such person, his acquittal thereof because of his insanity, and his insanity or mental irresponsibility at the present time. The cause shall be tried to a jury as hereinbefore provided. The evidence given upon the trial of the criminal charge, if preserved by statement of facts or bill of exceptions, may be read in evidence, or the witnesses testifying upon the former trial may themselves be called. The jurors trying the criminal charge may testify as to the ground of acquittal. If the

jury shall find that the defendant committed a crime, that he was acquitted thereof because of insanity, and that he is now insane or mentally irresponsible and an unsafe person to be at large, such person shall be committed to the penitentiary as a criminally insane person and be confined under the provisions of this act; otherwise, he shall be discharged. Either party may appeal to the Supreme Court as in other cases.

## JUDGMENT.

Appeals to supreme court §7290.

Appeal and new trial, credit on second conviction §7334; credit of judgment affirmed §7330.

Reversal by defendant, discharge when §7333.

Costs, court or jury may find defendant not liable §939.

Second conviction, credit given for time served on first §7334.

Sentences, suspension of §8715; indeterminate §8716; two convictions §8720.

Supreme court judgment §7333.

Judgment follows verdict, §9390.

**§9303. Judgments Are Liens. §1111.—349.** Judgments for fines in all criminal actions rendered, are, and may be made liens upon the real estate of the defendant in the same manner and with like effect as judgments in civil actions.

Lien of judgments, §8111.

Credit for time served in judgment on second trial ordered by supreme court, §7334.

All fines and forfeitures belong to county, §§9332, 9212.

Lien abated on death of defendant, State v. Furth 82 W. 665.

The provisions of this chapter apply to

costs in peace bonds and commitment proceedings, Clallam County v. Hall 23 W. 85.

Sentence of two years and fine of one dollar and costs held not excessive for forgery of fifteen dollar check, State v. Newton 29 W. 373.

Judgment may be for full fine, costs and imprisonment to be added, Foster v. Territory 1 W. 411.

**§9304. Stay of Execution. §1112.—350.** The defendant may have a stay of execution for the same length of time, and in the same manner, as provided by law in civil actions, and with like effect, and the same proceedings may be had therein.

It seems that right to stay has been taken away by later section, §9317.

Stay of execution, §9315.

**§9305. Disposition of Fines. §1113.—351.** All fines imposed on any person by the provisions of this act, where the same shall be collected, shall be paid to the county treasurer of the county where such conviction shall have been had, to go into the general county fund. The county treasurer shall give duplicate receipts therefor, one of which will be filed with the county auditor; and all officers refusing or neglecting to pay over any fines within one month after they shall have been received, shall, upon conviction thereof, be fined in four fold the amount of such fines so received.

**§9306. Judgment. §1114.—352.** After verdict of guilty, or finding of the court against the defendant, if the judgment be not arrested, or a new trial granted, the court must pronounce judgment.

Mandamus will lie to compel judgment on plea of guilty by adult the court having suspended sentence, State ex Lundin v. Court 102 W. 600.

Judgment follows verdict—costs—court shall fix punishment §9389.

Excessive sentence can not be reviewed by supreme court, State v. Patchen 37 W. 24.

Judgment can not vary from verdict as to crime or degree, State v. Symes 17 W. 596.

Twelve years for assault with intent to rob held not excessive, State v. Fenton 30 W. 325.

Judgment may be for imprisonment only though fine is also provided for, State v. Dunlap 25 W. 292.

**§9307. Defendant Must Be Personally Present. §1115.—353.** For the purpose of judgment, if the conviction be for an offense punishable by imprisonment, the defendant must be personally present; if for a fine only, he must be personally present or some responsible person must undertake for him to secure the payment of the judgment and costs; judgment may then be rendered in his absence.

It is not necessary that a defendant out dict of acquittal, State ex rel. Gabe v. on bail be present upon receipt of a ver- Main, 66 W. 381.



**§9308. Bench Warrant if not Present. §1116.—354.** If in any case the defendant is not present when his personal attendance is necessary, the court may order the clerk to issue a warrant for his arrest, which may be served in any county in the state, as a warrant of arrest in other cases.

**§9309. Defendant Interrogated. §1117.—355.** When the defendant appears for judgment, he must be informed by the court of the verdict of the jury and asked whether he have any legal cause to show why judgment should not be pronounced against him.

**§9310. Bench Warrant and Forfeiture of Recognizance. §1118.—356.** If the defendant have been discharged on bail, or have deposited money instead thereof, and do not appear for judgment, when his personal appearance is necessary, the court, in addition to the forfeiture of the recognizance, or of the money deposited, may direct the clerk to issue a bench warrant for his arrest.

**§9311. Commitment Until Fine is Paid. §1119.—357.** When the defendant is adjudged to pay a fine and costs the court shall order him to be committed to the custody of the sheriff until the fine and costs are paid or secured as provided by law.

It seems that fine and costs must be "paid," §9317.

**§9312. Execution for Costs. §1120.—358.** Upon a judgment for fine and costs, and for all adjudged costs, execution shall be issued against the property of the defendant, and returned in the same manner as in civil actions.

but see §9317.

Death abates execution, *State v. Furth*  
82 W 665.

Executions in civil cases, §8125.

Execution on forfeited recognizance,

No execution if defendant in jail, §9320; §9347.

**§9313. Recognizance in Addition to Punishment. §1121.** Every court before whom any person shall be convicted upon an indictment or information for an offense not punishable with death or imprisonment in the penitentiary may, in addition to the punishment prescribed by law, require such person to recognize with sufficient sureties in a reasonable sum to keep the peace, or to be of good behavior, or both, for any term not exceeding one year, and to stand committed until he shall so recognize. L. '91 46.

Recognizance to keep the peace generally, §9567.

**§9314. Recognizance Same as to Keep the Peace. §1122.—360.** In case of the breach of the conditions of any such recognizance, the same proceedings shall be had that are by law prescribed in relation to recognizances to keep the peace.

**§9315. Stay of Execution. §1123.—361.** Every defendant against whom a judgment has been rendered for fine and costs, may stay the execution for the fine assessed, and costs, for sixty days from the rendition of the judgment by procuring one or more sufficient sureties to enter into a recognizance in open court, acknowledging themselves to be bail for such fine and costs.

Stay of execution, §9304.

It seems that right to stay has been taken away by later section, §9317.

**§9316. Non-Compliance With Stay. §1124.—362.** Such sureties shall be approved by the clerk, and the entry of the recognizance shall be written immediately following the judgment, and signed by the bail, and shall have the same effect as a judgment, and if the fine or costs be not paid at the expiration of the sixty days, a joint execution shall issue against the defendant and the bail, and an execution against the body of the defendant, who shall be committed to jail, to be released as provided in this act, in committal for default to pay or secure the fine and costs.

**§9317. Imprisonment for Fine and Costs. §1125.** If any person ordered into custody until the fine and costs adjudged against him be paid shall not, within five days, pay, or cause the payment of the same to be made, the clerk of the court shall issue a warrant to the sheriff commanding him to imprison such defendant in the county jail until such fine and

costs are paid, or until he has been imprisoned in such jail one day for every three dollars of such fine and costs; but execution may at any time issue against the property of the defendant as in other cases. L. '91, 46.

Stay if judgment on forfeited recognizance, §9348. law as to rate of allowance and issuance of execution while defendant is in jail, being later than §9320. Putting prisoners to work, §§8714, 9320, 9334, 1674.

"Payment of the same to be made" it seems takes away right to stay provided by, §§9304, 9315. Death abates action, State v. Furth 82 W. 665.

**§9318. Form of Execution.** §1126.—364. When any person shall be sentenced to be imprisoned in the penitentiary or county jail, the clerk of the court shall, as soon as may be, make out and deliver to the sheriff of the county, or his deputy, a transcript from the minutes of the court, of such conviction and sentence duly certified by such clerk, which shall be sufficient authority for such sheriff to execute the sentence who shall execute it accordingly.

All process shall run in the name of the state, Const., art. 4, §27.

Commitment not necessary to conviction for attempt to escape jail, State v. Hatfield, 66 W. 9.

**§9319. Sentence to Penitentiary.** §1127.—365. In every case where imprisonment in the penitentiary is awarded against any convict, the form of the sentence shall be, that he be punished by confinement at hard labor; and he may also be sentenced to solitary imprisonment for such term as the court shall direct, not exceeding twenty days at one time; and in the execution of such punishment the solitary shall precede the punishment by hard labor, unless the court shall otherwise order.

**§9320. Serving Time for Fine and Costs.** §1129. When a defendant is committed to jail on failure to pay any fines and costs he shall under the order of the county commissioners work out the amount of the fine and costs at the rate of two dollars per day and in case he shall so work out the fine and costs or in case he shall not be able to work or the county commissioners fail to provide work and he shall have been confined in the county jail one day for every two dollars of such fine and costs no execution shall issue therefor. When any defendant is in the custody of the sheriff by virtue of a sentence of imprisonment in the county jail and there be no county jail in the county he shall under the order of the county commissioners cause such person to work his unexpired term of imprisonment in such manner as said county commissioners may direct. L. '83 38.

Execution as in civil cases, §§9312, 9317.

**Substitute—AN ACT** relating to the issuance of the death warrant, the contents thereof, the return of same, fixing the place of executions, providing for the safe custody of the condemned, defining the duties of the superintendent of the State Penitentiary, the sheriff and the clerk in relation to said warrant, repealing all acts or parts of acts inconsistent herewith, excepting as to acts done and crimes committed prior to the taking effect of this act. Received by the Governor June 12, 1901, and became a law without approval. General Repeal. Existing proceedings saved. Laws '01 Ex. Sess. p 17.

Former act '01 p 100.

**§9321. Death Warrant, When Issued.** §1. When judgment of death is rendered following conviction and no appeal is taken, or the judgment has been affirmed on appeal, a death warrant shall be issued by the clerk of the trial court, which said warrant shall be signed by a judge of said court and attested by the clerk thereof under the seal of the court. Said warrant shall be directed to the superintendent of the State Penitentiary of the State of Washington and shall state the conviction of the person named therein and the judgment of the court, and appoint a day in which the judgment shall be executed by the superintendent of the State Penitentiary, which shall not be less than thirty nor more than ninety days from the date of final judgment.

Laws '01 p 100 did not become effective ing law though amended law will go into effect before its execution State ex rel. prior to repeal, in re Boyce 25 W. 612.

Warrant must issue according to exist- Campbell v. Superior Court 25 W. 271.



**§9322. Order—Duties of Sheriff.** §2. At the time of the issuance of said death warrant an order shall be issued by the clerk of the court, which shall be signed by the judge and attested by the clerk under the seal of the court. Said order shall direct the sheriff to hold the person condemned to death, who shall be named therein, in safe custody and forthwith deliver said person together with the death warrant into the hands of the superintendent of the State Penitentiary.

**§9323. Execution—Who May Visit Condemned Person.** §3. Upon delivery to him of said death warrant and of the person therein named, the superintendent of the State Penitentiary shall take the person condemned to be executed and keep said person in safe custody within said State Penitentiary until the day appointed in the warrant for the execution upon which appointed day he shall carry out the mandate contained in said warrant by executing said condemned person within the walls of the State Penitentiary in the manner provided by law. And between the date of receiving such condemned person and the date fixed in such warrant for his execution, such superintendent shall not suffer or permit any person to visit, converse, or communicate with such condemned person excepting the attendants in the State Penitentiary, legal, spiritual and medical advisers and the members of the immediate family of the condemned person, which visits and communications shall be under and subject to the rules and regulations of the State Penitentiary.

**§9324. Record of Death Warrants.** §4. The superintendent of the State Penitentiary shall keep in his office as part of the public records a book in which shall be entered a copy of the death warrant and his return made thereon together with a complete statement of his acts in pursuance of said warrant.

**§9325. Return of Warrant.** §5. Within twenty days after said execution the superintendent of the State Penitentiary shall return said death warrant to the clerk of the court from which same was issued with his return thereon showing all proceedings had by him thereunder.

**§9326. Execution of Order by Sheriff.** §6. The sheriff to whom the above named order is issued and delivered, shall immediately execute such order and return the same into court within twenty days after he has delivered the death warrant and the person named therein into the hands of the superintendent of the State Penitentiary, with his return thereon showing all proceedings had by him thereunder.

**§9327. Duties of Clerk on Return.** §7. The clerk of the court from which the death warrant and the order to the sheriff were issued shall upon receipt of the returns from the superintendent of the State Penitentiary and from the sheriff, hereinbefore directed, file same with the records in the case and subjoin to the record of conviction and sentence a brief abstract of such returns.

**§9328. Sheriff to Hold Convict.** §8. Pending the issuance of the death warrant, the sheriff shall hold the condemned person in safe custody.

**§9329. How Death Penalty Inflicted.** §1131.—369. The punishment of death prescribed by law must be inflicted by hanging by the neck.

**§9330. Time Passed for Death Sentence Another Day to Be Fixed.** §1132.—371. Whenever the time appointed for the execution of a prisoner shall have passed, from any cause, the court by whom the time was fixed, or the judge or judges thereof, shall cause the prisoner to be brought immediately before the said court judge or judges, and proceed to appoint a day for the carrying into effect, of the sentence of death.

**§9331. Clerk's Final Record.** §1134. The clerk of the court shall make a final record of all the proceedings in a criminal prosecution within six months after the same shall have been decided, which shall contain a copy of the minutes of the challenge to the panel of the grand jury, the indictment or information, journal entries, pleadings, minutes of challenges to panel of petit jurors, judgment, orders, or decision, and bill of exceptions. L. '91 46.

**§9332. Fines Belong to Counties.** §1135.—373. All fines and forfeitures shall belong to the counties from which the defendants come, to be applied to the same purposes as if the court was a superior court of the county.

All fines belong to county, §§9305, 9212.

**§9333. Pardons and Commutations.** §1136.—374. Whenever a prisoner has been sentenced to death, the governor shall have power to commute such sentence to imprisonment for life at hard labor; and in all cases in which the governor is authorized to grant pardons or commute sentence of death, he may, upon the petition of the person convicted, commute a sentence or grant a pardon, upon such conditions, and with such restrictions, and under such limitations as he may think proper; and he may issue his warrant to all proper officers to carry into effect such pardon or commutation, which warrant shall be obeyed and executed, instead of the sentence, if any, which was originally given. The governor may also, on good cause shown, grant respites or reprieves from time to time as he may think proper.

Governor shall have power to pardon, Governor may issue warrant revoking Const., art. 3, §9; commutation, §§4378, conditional pardon—trial by court on 4391; parole, §4394; from reformatory. habeas corpus—conditions breached, §6753. Spencer v. Kees 47 W. 276.

**Supplementary—AN ACT in relation to city and county prisoners.** Approved December 1, 1881. C81 §§2075-6.

**§9334. Work, Prisoners City Jail.** §2075.—1. That when a person has been sentenced by any justice of the peace in a city in this state to a term of imprisonment in the city jail, whether in default of payment of a fine or otherwise, such person may be compelled on each day of such term, except Sundays, to perform eight hours' manual labor upon the streets, public buildings and grounds of such city and to wear an ordinary ball and chain, while performing such labor.

County prisoners put to work, later act, §8714; also §§9320, 1674.

**§9235. Work for Prisoners in County Jail.** §2076.—2. When a person has been sentenced by a justice of the peace or judge of the superior court, to a term of imprisonment, in the county jail, whether in default of payment of a fine or costs or otherwise; such person may be compelled to work eight hours each day of such term in and about the county buildings, public roads, streets, and grounds: Provided, This shall not apply to persons, committed in default of bail.

**Supplementary—AN ACT in relation to Territorial convicts and providing notices of convictions to be filed with the Territorial auditor.** Approved November 28, 1883. Laws '83 p 71.

**§9336. Conviction to Be Certified to State Auditor.** §1. That in all convictions for felony, punishable by imprisonment in the state penitentiary, the clerk of the superior court in which any such conviction shall have occurred, shall, forthwith, after sentence, certify the fact of such conviction to the state auditor, giving the date of such sentence, the name and age, (if known,) of the party, the nature of the crime for which convicted, and the duration of sentence imposed by the court.

**§9237. Warden's Report to State Auditor.** §2. It shall be the duty of the superintendent, or keeper of the state penitentiary, immediately upon the expiration of the time for which any prisoner, confined in the state prison is convicted, or upon the death, pardon, release or escape of any such prisoner, to give official notice thereof to the state auditor. It shall be the duty of said superintendent or keeper of the prison, on or before the first day of January 1884, to make out a detailed report to the state auditor to be filed in his office showing:

The names of all prisoners committed to the penitentiary from and after the first day of June, 1878;

The county from which committed;

The nature of the crime for which convicted;

The duration of the sentence, also the names and number of all those who have died, who have been discharged, or who have escaped from said penitentiary, since the said first day of June 1878.



**§9338. — Penalty. §3.** Should the superintendent or keeper of the state penitentiary neglect or refuse to give the notice to the state auditor, as provided in section two (2) of this act, he shall, upon conviction thereof, be deemed guilty of a misdemeanor, and shall be subject to a fine in any sum not exceeding five hundred dollars, in any court of competent jurisdiction, and shall stand committed until said fine is paid.

**§9339. Auditor's Record. §4.** It shall be the duty of the state auditor to keep a public record of all convictions of parties sentenced to the state penitentiary; such record to embody the full data of facts reported to him under sections one (1) and two (2) of this act.

### LIMITATION OF ACTIONS.

**§9340. Limitation of Actions. §779.** Prosecutions for the offenses of murder and arson, where death ensues, may be commenced at any period after the commission of the offense; for offenses the punishment of which may be imprisonment in the penitentiary, within three years after their commission; and for all other offenses within one year after their commission: Provided. That any length of time during which the party charged was not usually and publicly resident within this state shall not be reckoned within the one and three years respectively: And further provided, That where an indictment has been found, or an information filed, within the time limited for the commencement of a criminal action, if the indictment or information be set aside, the time of limitation shall be computed from the setting aside of such indictment or information. L. '91 46.

Murder includes both degrees and manslaughter — preliminary examination is 19 W. 435.

### NEW TRIALS.

Second conviction, credit given for time served under first §7334.

**§9341. Grounds of New Trial. §1105.** An application for a new trial must be made before judgment, and may be granted for the following causes materially affecting a substantial right of the defendant:

1. When the jury has received any evidence, paper, document or book not allowed by the court.
2. Misconduct of the jury.
3. Newly discovered evidence material for the defendant, which he could not have discovered with reasonable diligence, and produced at the trial.
4. Accident or surprise.
5. Error of law occurring at the trial, and excepted to by the defendant.
6. When the verdict is contrary to law and evidence; but not more than two new trials shall be granted for these causes alone. L. '91 46.

Motion after judgment is to vacate judgment and showing must be clear, State v. Scott 101 W. 199.

Court has no jurisdiction after judgment entered nor after appeal, State v. Duncan 101 W. 542.

New trials in civil cases, §8224.

Juror stating before trial he would "bet he'd never get loose" and not disclosing prejudice on voir dire is ground for new trial, State v. Swafford 88 W. 659.

New trial for misconduct of counsel in discretion of court, State v. Johnson 103 W. 59.

Hearsay of attempt to bribe juror not ground for new trial—defendant must disclaim attempt, State v. Wilson 42 W. 56.

Affidavit of juror that he was coerced or as to effect comment of judge had on his mind not competent to impeach verdict, State v. Aker 54 W. 342.

Alder by verdict does not obtain in criminal cases, State v. Hall 54 W. 142.

Juror may impeach own verdict where

misconduct does not "inhere" in case, State v. Lorenzy 59 W. 308.

Prosecutrix made affidavit that defendant did not commit crime, new trial should have been granted, State v. Powell 51 W. 372.

Robbery in a drunken fight not established and new trial ordered, State v. Jamieson 45 W. 314.

Reversal for misconduct of jury in visit to jail conversing with police captain a prosecuting witness, State v. Miller 61 W. 125.

Refused if evidence cumulative or to impeach or witness drunk, State v. Gray 61 W. 549.

Juror separated from body and drank liquor in saloon with bailiff, held misconduct, State v. Strodemoler 41 W. 159.

Counter affidavits in motion for new trial were filed and no abuse of discretion shown in refusing new trial case affirmed, State v. Buhmann 16 W. 700.

Witness will not be heard to impeach

his own testimony after trial, *State ex rel. Davis v. Superior Court* 15 W. 339.

Judge leaving bench and going into jury room is misconduct, *State v. Wroth* 15 W. 621.

Bailiff telling the jury he would keep them locked up all night meaning that judge would go home at certain hour is not misconduct, *State v. Zettler* 15 W. 625.

Misconduct of jury in separating must be shown by affidavit where record is silent, *Lybarger v. State* 2 W. 522.

New trial refused on affidavits and counter-affidavits that juror had conversed with third person, *State v. Hunter* 18 W. 670.

Introduction of exhibit used in preliminary examination can not surprise defendant, *State v. Hunter* 18 W. 670.

Several witnesses testified that shirt did not belong to defendant, new evidence that defendant's mother and sister made shirt for him is cumulative and not ground, *State v. Hunter* 18 W. 670.

Juror testified on voir dire that he did not know defendant and in jury room makes statement of facts not in evidence is misconduct, *State v. Parker* 25 W. 405.

Defendant must have been diligent in procuring evidence for first trial, *State v. Power* 24 W. 34.

Juror stated on voir dire that he had not served within a year when he had; new trial was denied, *State v. Hall* 24 W. 255.

New trial should not be granted on uncorroborated statement of accomplice, *State v. Hyde* 22 W. 551.

New trial properly denied when jurors denied misconduct, affidavits of new evidence were met by counter affidavits and it was shown defendant was not surprised,

the same parties and witnesses appearing at trial and preliminary examination, *State v. Webb* 20 W. 500.

Motions for new trial and in arrest of judgment may be had in absence of accused, *State v. Greer* 11 W. 244.

Juror saying prior to trial, if what he had read was true defendant ought to be convicted on general principles will not give new trial, *State v. Gile* 8 W. 12.

Defendant denied that he could get boots in evidence "on" and other evidence contradicted him, that defendant could not "wear" boots will not give new trial, *State v. Nordstrom* 7 W. 506.

Cumulative evidence by white witness former evidence being given by Indians will give new trial, *State v. John Port Townsend* 7 W. 462.

Prosecuting attorney representing he would not further prosecute will give new trial on newly discovered evidence, *State v. John Port Townsend* 7 W. 462.

New trial refused on affidavit of another confessing crime, *State v. Miller* 3 W. 131.

While granting of new trial is discretionary where the evidence is material as the proof of an alibi and is not merely cumulative the Supreme Court will reverse ruling, *State v. Stover* 3 W. 206.

New trial properly refused because evidence could have been produced at first trial, *State v. Vance* 29 W. 435.

It should appear that new evidence would alter verdict, *Leschi v. Territory* 1 W. T. 14.

Granting of new trial is in the discretion of the court, *Smith v. United States* 1 W. T. 262.

Drunkenness of witness not cause for new trial unless continuance was asked, *Fox v. Territory* 2 W. T. 297.

**§9342. Affidavit. §1106.—344.** When the application is made for a cause mentioned in the first, second third and fourth sub-divisions of the preceding section, the facts on which it is based shall be set out in an affidavit.

**§9343. Arrest of Judgment. §1107.** Judgment may be arrested on the motion of the defendant for the following causes: 1. No legal authority in the grand jury to inquire into the offense charged, by reason of its not being within the jurisdiction of the court. 2. That the facts as stated in the indictment or information do not constitute a crime or misdemeanor. L. '91 46.

Mandamus will not lie to compel superior court to pronounce judgment on plea of guilty, *State ex Lundin v. Court* 102 W. 600.

Demurrer is not condition precedent to motion, *State v. George* 79 W. 262.

Motion under subd. 2, may be made after two trials on merits without objection, *State v. Feamster*, 12 W. 461; see, *State v. Barkuloo*, 18 W. 52.

Arrest of judgment based only on statute, *State v. Cimini* 53 W. 268.

Objection to evidence before grand jury comes too late in arrest of judgment, *State v. Hyde* 22 W. 551.

Arrest of judgment may be had after two trials, on the merits, *State v. Feamster* 12 W. 461.

Verdict will not aid information not charging facts to constitute crime, *State v. Carey* 4 W. 424.

**§9344. — On Court's Own Motion. §1108.—346.** The court may also, on its view of any of these defects, arrest the judgment without motion.

**§9345. — Second Charge. §1109.—347.** When judgment is arrested in any case, and there is reasonable ground to believe that the defendant can be convicted of an offense, properly charged, the court may order the defendant, to be re-committed, or admitted to bail anew, to answer a new indictment.



When judgment a bar §9146.

Judgment on verdict is bar, §9166.

§9346. **Exceptions.** §1110.—348. Exceptions may be taken by the defendant, as in civil cases, on any matter of law by which his substantial rights are prejudiced.

Exceptions in civil trials, §7809.

## RECOGNIZANCES.

Action for fines and forfeitures §8248.

### ACTION ON FORFEITED RECOGNIZANCES.

§9347. **Forfeiture of Recognizances.** §1137.—375. In criminal cases where a recognizance for the appearance of any person, either as a witness or to appear and answer, shall have been taken and a default entered, the recognizance shall be declared forfeited by the court, and at the time of adjudging such forfeiture said court shall enter judgment against the principal and sureties named in such recognizance for the sum therein mentioned, and execution may issue thereon the same as upon other judgments.

Executions generally, §9312.

statute or that record was not signed are

That bond has more conditions than not defenses, *Ainsworth v. Territory* 3 W. T. 270.

§9348. **Stay of Execution.** §1138. The parties, or either of them, against whom such judgment may be entered in the superior or supreme courts, may stay said execution for sixty days, by giving a bond, with two or more sureties, to be approved by the clerk, conditioned for the payment of such judgment at the expiration of sixty days, unless the same shall be vacated before the expiration of that time L. '91 46.

§9349. **Vacation of Judgment.** §1139. If a bond be given and execution stayed, as provided in section twelve hundred and ninety-one [§9348] and the person for whose appearance such recognizance was given shall be produced in court before the expiration of said period of sixty days, the judge may vacate such judgment upon such terms as may be just and equitable; otherwise execution shall forthwith issue as well against the sureties in the new bond as against the judgment debtors.

Imposes judicial discretion on court, *State v. Johnson*, 69 W. 612.

Vacation of forfeiture after 60 days in discretion of court, *State v. Jackschitz* 71 W. 253.

§9350. **Defects Shall Not Defeat Recognizance.** §88. No action brought on any recognizance given in any criminal proceeding whatever shall be barred or defeated, nor shall judgment be arrested thereon, by reason of any neglect or omission to note or record the default of any principal or surety at the time when such default shall happen, or by reason of any defect in the form of the recognizance if it sufficiently appear, from the tenor thereof, at what court or before what justice the party or witness was bound to appear, and that the court or magistrate before whom it was taken was authorized by law to require and take such recognizance; and a recognizance may be recorded after execution awarded. L. '91 46.

§9351. **Actions on Recognizances.** §1166.—404. All recognizances taken and forfeited before any justice of the peace or magistrate, shall be forthwith certified to the clerk of the superior court of the county; and it shall be the duty of the prosecuting attorney to proceed at once by action against all the persons bound in such recognizances, and in all forfeited recognizances whatever, or such of them as he may elect to proceed against.

## REWARDS.

§9352. **Reward, Obstructing Railroad Track.** §1290.—529. The governor shall offer a standing reward of two hundred dollars (\$200) for the arrest of each person who shall place any obstructions on any railroad track or who shall misplace any switch, rail, or ties on any such road,

whereby the life of any person passing over said road, may be endangered; and for the arrest of each person engaged in the robbing or attempting to rob, any person upon, or having in charge in whole or in part, any stage coach, wagon, railroad train or other conveyance engaged in carrying passengers or any private conveyance within this state, the reward to be paid to the person making such arrest out of any money in the treasury not otherwise appropriated immediately upon the conviction of the person so arrested, but no reward shall be paid except after such conviction.

Obstructing, etc., railway §8970.

Rewards for fugitives generally, §6649.

§9353. — **Payment of.** §1291.—530. The auditor of the state shall draw a warrant upon the treasurer for the amount of the reward upon presentation to him of a certificate of the clerk of the court where the conviction was had of such conviction and the finding of the court that the satisfactory proof was made that the person claiming the reward is entitled thereto, under the provision of this act.

Supplementary—AN ACT to authorize the county commissioners in the several counties of Washington Territory to offer and pay rewards for the apprehension of criminals. Approved February 3, 1886. Laws '86 p 124.

§9354. **Rewards by County Commissioners.** §1. That the county commissioners in the several counties of the state of Washington, when in their opinion the public good requires it, be and are hereby authorized to offer and pay a suitable reward, not to exceed five hundred dollars in any one case, to any person or persons who, in consequence of such offer, apprehends, brings back and secures any person or persons, convicted of or charged with any criminal offense, if the offense be a felony.

§9355. — **Payment of.** §2. Whenever any such reward has been offered by any board of county commissioners in the state of Washington, for the apprehension of any person or persons, convicted of or charged with any criminal offense, if the offense be a felony the person or persons who shall first apprehend, bring back and secure, such person or persons so charged shall be entitled to such reward, and the board of county commissioners who have offered such reward, are authorized to draw a warrant or warrants on the county treasurer, for the amount of such reward, who shall pay the amount of said warrant or warrants, out of any money in the county treasury not otherwise appropriated.

§9356. — **Contesting Claimants for.** §3. When more than one claimant applies for the payment of any reward offered by any board of county commissioners, such commissioners, shall determine in their respective counties, to whom the same shall be paid, and if to more than one person, in what proportion to each; and their determination shall be final and conclusive.

## SEARCH WARRANTS.

Intoxicating liquors, §§3173, 3196-8.

§9357. **Search Warrants Authorized.** §967.—204. When complaint shall have been made on oath, to any magistrate authorized to issue warrants in criminal cases, that personal property has been stolen or embezzled, or obtained by false tokens, or pretenses, and that the complainant believes that it is concealed in any particular house or place, the magistrate if he be satisfied that there is reasonable cause for such belief, shall issue a warrant for such property.

Search warrant for liquors, etc., §3196-7.

§8561.

All judicial officers are magistrates,  
Civil action of replevin, §8421.

Not necessary that the complaint, affidavit or search warrant contain the name of the person whose premises are to be searched, Olson v. Haggerty, 69 W.

Justice's jurisdiction in liquor cases sustained regardless of amount 95 W. 289. 48.



**§9358. — For What Purposes. §968.—205.** Any such magistrate, when satisfied that there is reasonable cause, may also upon like complaint made on oath, issue search warrant in the following cases, to-wit:

1. To search for and seize any counterfeit or spurious coin, or forged instruments, or tools, machines, or materials, prepared or provided, for making either of them.

2. To search for and seize, any gaming apparatus used or kept, and to be used in any unlawful gaming house, or in any building, apartment or place, resorted to for the purpose of unlawful gaming

Forgery or uttering forged money, etc., Court cannot presume sheriff obtained gambling apparatus wrongfully, *Way v. Territory*, 1 W. T. 415.

**§9359. To Whom Writ Directed—Contents. §969.—206.** All such warrants shall be directed to the sheriff of the county or his deputy, or to any constable of the county, commanding such officer to search the house or place where the stolen property or other things for which he is required to search are believed to be concealed, which place and property, or things to be searched for shall be designated and described in the warrant, and to bring such stolen property or other things, when found, and the person in whose possession the same shall be found, before the magistrate who shall issue the warrant, or before some other magistrate or court having cognizance of the case.

Arrest of person without search and finding of property is false imprisonment by officer, *Ton v. Stetson* 43 W. 471.

**§9360. Property to Be Kept. §970.—207.** When any officer in the execution of a search warrant, shall find any stolen or embezzled property, or shall seize any other things for which a search is allowed by this chapter, all the property and things so seized, shall be safely kept by the direction of the court or magistrate, so long as shall be necessary for the purpose of being produced in evidence on any trial, and as soon as may be afterwards, all such stolen and embezzled property, shall be restored to the owner thereof, and all other things seized by virtue of such warrant shall be destroyed under direction of the court or magistrate.

## TRIALS.

**§9361. Continuances. §1077.—315.** A continuance may be granted in any case on the ground of the absence of evidence on the motion of the defendant supported by affidavit showing the materiality of the evidence expected to be obtained and that due diligence has been used to procure it; and also the name and place of residence of the witness or witnesses; and the substance of the evidence expected to be obtained and if the prosecuting attorney admit that such evidence would be given, and that it be considered as actually given on the trial or offered and overruled as improper the continuance shall not be granted.

Continuances, civil cases §8485.

No continuance to state because of absence of witness not indorsed on indictment, §9215.

Indorsement of witness not ground for State v. Carpenter 56 W. 670.

Writing letter to secure witnesses is not diligence to secure continuance, State v. Leroy 61 W. 405.

Court has discretion in continuance, State v. Champoux 33 W. 339.

Prosecutor's declarations after being knocked down and unconscious is res gestae in robbery, State v. Ripley 32 W. 182.

Continuance while trial is in progress is in court's discretion, State v. Ripley 32 W. 182.

Refusal of continuance for absent witnesses held error, State v. Musselman 101

W. 330.

Exhibits may be taken into jury room, State v. Webster 21 W. 63; 2 W. T. 101.

Refusal of continuance to prove alibi where witness alleged to be in jurisdiction but can not be found is not error, State v. Wilson 9 W. 218.

Continuance may be granted in absence of accused, State v. Duncan 7 W. 336.

Party can not impeach evidence of witness he has admitted to avoid continuance, State v. Carter 8 W. 272.

Showing must be made of diligence and that evidence is not cumulative, State v. Brooks 4 W. 329.

Showing must be made that witness is the only witness, State v. Murphy 9 W. 204.

Continuance properly refused when wit-

**AN ACT** prohibiting the entry and search of private dwelling houses or places of residence without a search warrant and providing a penalty. L. '21 ch. 71.

**§9358-1. Other Searches Prohibited.** §1. It shall be unlawful for any policeman or other peace officer to enter and search any private dwelling house or place of residence without the authority of a search warrant issued upon a complaint as by law provided.

**§9358-2. Penalty.** §2. Any policeman or other peace officer violating the provisions of this act shall be guilty of a gross misdemeanor.

Defendant must make motion for continuance of second continuance was not error, State v. Burris 19 W. 52.

**§9362. Jury—Civil Rules Apply.** §1078. Except as otherwise specially provided, issues of fact joined upon an indictment or information shall be tried by a jury of twelve persons, and the law relating to the drawing, retaining, and selecting jurors, and trials by jury, in civil cases, shall apply to criminal cases. L. '91 46.

Juror answered "either that or a hung jury" and then answered "yes," held an agreement to verdict, State v. Millroy 103 W. 193.

Drawing and summoning jurors, §8140; selection of and trials, §8489.

Urging jury to agree without indicating verdict is not comment on facts, State v. Serwe 91 W. 516.

Juror by wrong name accepted by both sides is qualified, State v. Newcomb 58 W. 414.

Trial with less than twelve jurors can

not be had by consent, State v. Ellis 22 W. 129.

Explanation of instructions in the absence of the defendant is error, Linbeck v. State 1 W. 336.

Court properly requested to instruct that failure to prove motive would raise strong presumption of innocence, State v. Nordstrom 7 W. 506.

Former employer of decedent is competent as a juror, State v. Coella 3 W. 99.

Juror that has formed and expressed an opinion is disqualified, id.

**AN ACT** relating to trials in criminal actions; and providing for the drawing, retaining and selection of alternate jurors, and providing when this act shall take effect. Approved March 3, 1917. Laws '17 p 185.

**§9363. Alternate Jurors.** §1. Whenever, in the opinion of a judge of a superior court about to try a defendant against whom has been filed any indictment or information for a felony, the trial is likely to be a protracted one, the court may cause an entry to that effect to be made in the minutes of the court, and thereupon, immediately after the jury is impaneled and sworn the court may direct the calling of one or two additional jurors, in its discretion, to be known as "alternate jurors." Such jurors must be drawn from the same source, and in the same manner, and of the same qualifications as the jurors already sworn, to be subject to the same examination and challenge: Provided, That the prosecution shall be entitled to one, and the defendant to two peremptory challenges to such alternate jurors. Such alternate jurors shall be seated near, with equal power and facilities for seeing and hearing the proceedings in the case, and shall take the same oath as the jurors already selected, and must attend at all times upon the trial of the cause in company with the other jurors; and for a failure so to do are liable to be punished for contempt. They shall obey the orders of and be bound by the admonition of the court upon each adjournment of the court; but if the regular jurors are ordered to be kept in the custody of the sheriff during the trial of the case, such alternate jurors shall also be kept in confinement with the other jurors; and except, as hereinafter provided, shall be discharged upon the final submission of the case to the jury. If, before the final submission of the case, a juror die, or become ill, so as to be unable to perform his duty, the court may order him to be discharged and draw the name of an alternate, who shall then take his place in the jury box and be subject to the same rules and regulations as though he had been elected as one of the original jurors.



**§9365. Defendants' Peremptory Challenges.** §1079.—317. In prosecution for capital offenses, the defendant may challenge peremptorily twelve jurors; in prosecution for offenses punishable by imprisonment in the penitentiary, six jurors; in all other prosecutions three jurors. When several defendants are on trial together they must join in their challenges.

Capital punishment abolished, only six cured if defendants peremptory challenges peremptory challenges remain, *State v. Johnson* 83 W. 1. not exhausted, *State v. Champoux* 33 W. 339.

Failure to sustain challenge for cause is State and defendant must alternate one and two. *State v. Eddon* 8 W. 292.

**§9366. State's Peremptory Challenges.** §1080.—318. The prosecuting attorney, in capital cases, may challenge peremptorily six jurors, in all other cases three jurors.

This section construed with section 601 challenge talesmen after waiver as to jury though it gives the State the last challenge, *State v. Vance* 29 W. 435.

**§9367. Challenges to the Panel.** §1081.—319. Challenges to the panel shall only be allowed for a material departure from the forms prescribed by law, for the drawing and the return of the jury, and shall be in writing, sworn to and proved to the satisfaction of the court.

Challenge not taken in manner required moned for "ensuing" month is not cause but entertained by court should be sustained if meritorious, *State v. Payne*, 6 W. 405. *State v. Leroy* 61 W. 563.

Jurors drawn preceding month and sum- Where testimony is not brought up on appeal court's action will be sustained, *State v. Vance* 29 W. 435.

**§9368. Challenges for Causes.** §1082.—320. Challenges for cause shall be allowed for such cause as the court may, in its discretion, deem sufficient, having reference to the causes of challenge prescribed in civil cases, as far as they may be applicable, and to the substantial rights of the defendant.

Drawing of jurors formerly serving valid unless challenged, *State v. Barnes* 54 W. 493. challenge on that account, *State v. Rutten* 13 W. 203.

Opinion disqualifies juror, *State v. Riley* 36 W. 441. Juror with opinion formed though he states he can disregard it is subject to challenge, *State v. Willcox* 11 W. 215.

Witness for the state is incompetent and compelling defendant to exhaust peremptory challenge to remove juror is error —prosecuting attorney should inform the court, *State v. Stentz* 30 W. 134. That prosecuting attorney is legal adviser of justice of the peace is not ground of challenge, *State v. Lewis* 31 W. 515.

Opinion that will disqualify, *Rose v. State* 2 W. 310. Juror with "feeling of prejudice," or opinion on insanity caused by use of liquor or has opinion from newspaper is not disqualified, *State v. Croney* 31 W. 122.

Juror having heard purported facts which he can disregard will not disqualify him, *State v. Coella* 8 W. 512. Counsel can not "extract" opinion of juror and then challenge for cause, *State v. Straub* 16 W. 111.

Juror with opinion that would take strong evidence to change is subject to challenge *State v. Murphy* 9 W. 204. Juror being taxpayer is not ground of challenge in trial of public officer for use of public funds, *State v. Krug* 12 W. 288; juror's impression but not opinion will not disqualify him, *id.*

Opinion and impression — prejudice against drunkenness and insanity as a defense, *State v. Boyse* 24 W. 440. Asking juror if after trial he has reasonable doubt he will find verdict of not guilty is improper, *State v. Boklen* 14 W. 403.

Court may put leading question as "would you obey the court as to the law in the case?" —impressions from reading newspaper, *State v. Boyce* 24 W. 514. It is improper to ask juror if he would give more credence to minister than to any one else *State v. Holedger* 15 W. 443.

Mere "impression" will not disqualify juror, *State v. Harras* 22 W. 57. Juror who has read but has not formed opinion though it would take some evidence to remove impression is not subject to challenge for cause, *State v. Gile* 8 W. 12.

Juror had opinion and challenge should have been sustained, *State v. Moody* 18 W. 165. When opinion was a qualified one juror not subject to challenge, *State v. Farris* 26 W. 205.

If juror is subject to challenge for cause but it refused error is cured by excuse of juror on peremptory challenge, *State v. McCann* 16 W. 249. Objection not taken is deemed waived, *Clarke v. Territory* 1 W. T. 69.

Opinion of juror—overruling of proper challenge is cured by peremptory challenge, *State v. Carey* 15 W. 549. Qualification of juror is largely in discretion of court, *White v. Territory* 3 W. T. 397.

Opinion of juror cause of challenge—failure to sustain challenge is error if defendant required to exhaust peremptory See notes to §§8496, 8498.

**§9369. Disqualification of Juror. §1083.** No person whose opinions are such as to preclude him from finding any defendant guilty of an offense punishable with death shall be compelled or allowed to serve as a juror on the trial of any indictment or information for such an offense. L. '91 46.

**§9370. Oath of Jurors. §1084.** The jury shall be sworn or affirmed well and truly to try the issue between the state and the defendant, according to the evidence; and in capital cases, to well and truly try, and true deliverance make between the state and the prisoner at the bar, whom they shall have in charge, according to the evidence. L. '91 46.

Record showing jury was sworn to try Oath of "true deliverance" instead of cause "well and truly" is sufficient, State "according to the evidence" sustained, v. Barkuloo 18 W. 141. State v. Gin Pon 16 W. 425.

Oath approved, State v. Johnny Tommy 19 W. 270. Oath varied, or "duly sworn" held valid, Leonard v. Territory 2 W. T.381; Hartigan v. Territory 1 W. T. 448.

**§9371. Trial by the Court. §1085.—323.** The defendant and prosecuting attorney, with the assent of the court, may submit the trial to the court, except in capital cases.

Trial by court in civil cases, §§8477, 8488. Is this section in force? State v. Ellis 22 W. 129.

**§9372. When Defendant's Presence Required. §1086.—324.** No person prosecuted for an offense punishable by death, or by confinement in the penitentiary or in the county jail, shall be tried unless personally present, during the trial.

Admonition without presence of defendant and attorney for deliberation is error, State v. Shutzler 82 W. 365.

Instruction to jury in absence of accused not cured by again giving same instruction with defendant present, State v. Beaudin 76 W. 306.

Does not, in cases not capital, preclude

the entry of judgment upon a verdict received in the absence of the defendant, if the defendant, out on bail, voluntarily absents himself, State ex rel. Gabe v. Main, 66 W. 381.

Defendant present at beginning of trial will be presumed present thereafter, State v. Costello 29 W. 366.

**§9373. Presence or Bond When. §1087.—325.** No person prosecuted for an offense, punishable by a fine only, shall be tried without being personally present, unless some responsible person, approved by the court, undertakes to be bail for stay of execution and payment of the fine and costs that may be assessed against the defendant. Such undertaking must be in writing, and is as effective, as if entered into after judgment.

In offense punishable by fine only, defendant may appear on arraignment by

counsel, §9173.

Presence secured by bench warrant, §9308.

**§9374. Conduct of Trial as in Civil Actions. §1088.** The court shall decide all questions of law which shall arise in the course of the trial, and the trial shall be conducted in the same manner as in civil actions. L. '91 46.

**§9375. Jury Not to Separate. §1089.—327.** Juries in criminal cases shall not be allowed to separate, except by consent of the defendant and the prosecuting attorney, but shall be kept together without meat or drink, unless otherwise ordered by the court, to be furnished at the expense of the county.

Separation of a juror in a felony case is reversible error, though defendant may not have been prejudiced thereby, nor a formal objection urged at the time, State v. Bennett, 71 or 72 W.

Consent given for jury to attend church, etc., but jury separated, held error, State v. Morden 87 W. 465; State v. Druxman 88 W. 424.

Separation of juror in felony cases is error, State v. Bennett 71 W. 673.

Separation after selection and before being sworn does not invalidate, State v. Newcomb 58 W. 414.

Does not apply to sworn on voir dire, State v. Clark 58 W. 128.

Defendant's counsel consented in his presence to separation, held not error,

State v. Stockhammer 34 W. 262.

If juror inadvertently allowed to separate from others, defendant must object, State v. Shuck 38 W. 270.

Court asking defendant to permit a juror to go home on account of sickness in his family which leave was granted, is reversible error, State v. Parker 25 W. 405.

One sick juror was taken to court house on a car by bailiff and remainder walked with another bailiff is not a separation, State v. Burns 19 W. 52.

Jury can not separate after cause submitted and must give verdict in open court, Anderson v. Seattle 2 W. 183.

Court asked counsel for defendant if there was any objection to separation of jury before verdict, held not error unless



defendant could show he was prejudiced, Tommy 19 W. 270.

State v. Holedger 15 W. 443.

Jury can not separate before verdict returned into court, State v. Barkuloo 18 W. 141; even by consent, State v. Rogan 18 W. 43; State v. Manson 19 W. 94.

Applies to jury accepted and sworn to try case and not jury on voir dire, State v. Voorhees 12 W. 53; State v. Johnnie 1 W. T. 196.

**§9376. View By Jury.** §1090.—328. The court may order a view by any jury impaneled to try a criminal case.

View in civil cases, §8509.

Hunter 18 W. 670.

Refusal of view will not be disturbed unless there is abuse of discretion, State v. defendant, State v. Lee Doon 7 W. 308.

**§9377. Separate Trial in Joint Charge.** §1091. When two or more defendants are indicted or informed against jointly, any defendant requesting it may, in the discretion of the trial judge be tried separately. L. '19 ch. 16; L., '91 46; R.&B. §2161.

Confines evidence to acts for which individual defendant alone is responsible, State v. Beebe, 66 W. 463.

Presence of one jointly indicted but not on trial in court is not error, State v. Hyde 22 W. 551.

Demand for separate trial sufficient when made within reasonable time after knowledge that state would ask for joint trial, State v. Moran, 66 W. 588.

Defendant may demand separate before cause is assigned for trial from which time until jury is sworn court may grant separate trial, State v. Mason 19 W. 94.

Demand for separate trial after jury called, is too late, State v. Bush 41 W. 13.

Refusal of separate trial if conspiracy charged—refusal of separate trial cured by acquittal, State v. McCann 16 W. 249.

**§9378. A Defendant as State's Witness.** §1092.—330. When two or more persons are included in one prosecution, the court may, at any time before the defendant has gone into his defense, direct any defendant to be discharged, that he may be a witness for the state. A defendant may also, when there is not sufficient evidence to put him on his defense, at any time before the evidence is closed, be discharged by the court, for the purpose of giving testimony for a co-defendant. The order of discharge is a bar to another prosecution for the same offense.

Evidence in bribery, etc., compulsory—immunity, §9219.

As at the common law, accessory before the fact is not competent witness for defendant, Edwards v. Territory 1 W. T. 196.

**§9379. Variance, Second Charge.** §1093.—331. When it appears at any time before verdict or judgment, that a mistake has been made in charging the proper offense, the defendant shall not be discharged if there appear to be good cause to detain him in custody; but the court must recognize him to answer to the offense shown, and if necessary recognize the witnesses to appear and testify.

When acquittal a bar §9147.

cashed is not variance, State v. Hoshor 26 W. 643.

Charge of stealing "Hybrid" wheat, jury sworn and information dismissed, held not a bar to charge of stealing "Jones Fife" wheat, State v. Wilson 91 W. 136.

In charge of obtaining money under false pretenses allegation that thing is of no value and proof that it is of some value is immaterial, State v. Knowlton 11 W. 512.

Discharge before verdict on charge of larceny by impersonation is not bar to charge of obtaining property under false pretenses, State v. Rieff 14 W. 664; general rule declared, id.

Information set aside on motion of prosecuting attorney "the court being fully advised," it will be presumed there was sufficient cause, State v. Hansen 10 W. 235.

Verdict is not sustained by proof of Canadian bills and same bills not proven under allegation of lawful money of the United States, State v. Phillips 27 W. 364.

Information for burglary in night time was quashed and another for burglary in day time filed giving defendant time to prepare for trial is valid procedure, State v. Hansen 10 W. 235.

**§9380. Wrong Venue—Procedure.** §1094. When it appears, at any time before verdict or judgment, that the defendant is prosecuted in a county not having jurisdiction, the court may order the venue of the indictment or information to be corrected, and direct that all the papers and proceedings be certified to the superior court of the proper county, and recognize the defendant and witnesses to appear at such court, on a day specified in the order, and the prosecution shall proceed in the latter court in the same manner as if it had been there commenced. L. '91 46.

Offenses must be tried in county where offense triable in two or more counties, committed, Const., art. 1, §22, §9394; of- §9391.

**§9381. Prosecution Not Prejudiced. §1095.** When a jury has been impaneled in either case contemplated in [§§9379, 9380] sections twelve hundred and forty-eight and twelve hundred and forty-nine, such jury may be discharged without prejudice to the prosecution. L. '91 46.

**§9382. Answer is Bar to Included Offense. §1096.** When the defendant has been convicted or acquitted upon an indictment or information of an offense consisting of different degrees, the conviction or acquittal shall be a bar to another indictment or information for the offense charged in the former, or for any lower degree of that offense, or for an offense necessarily included therein. L. '91 46.

**§9383. Verdict for Lesser Degree. §1097.** Upon an indictment or information for an offense consisting of different degrees, the jury may find the defendant not guilty of the degree charged in the indictment or information, and guilty of any degree inferior thereto, or of an attempt to commit the offense. L. '91 46.

Conviction of lesser crime, §8698.

Assault only and not assault and battery included offense in charge of assault with intent to rob, State v. Beatty 59 W. 235.

Murder in the first and lesser degrees

are included offenses. State v. Howard 33 W. 250.

Cited 76 W. 586.

**§9384. Verdict for Included Offense. §1098.** In all other cases, the defendant may be found guilty of an offense the commission of which is necessarily included within that with which he is charged in the indictment or information. L. '91 46.

Plea of guilt of included offense authorized. State v. Wilmot 95 W. 326.

Charging part of information held sufficient for murder or manslaughter, State v. Lewis 80 W. 532.

Conviction of lesser crime, §8698.

Assault with weapon, State v. Copeland, 66 W. 244.

Assault with intent to commit rape included offense in charge of rape, State v. Marselle 43 W. 273.

Instruction on included offense is im-

proper when there is no evidence, but it is not comment on the facts and does not violate right of trial by jury, State v. McPhail 39 W. 199.

Attempt is included in charge of consummated offense. State v. Romans 21 W. 284.

Included offense may be charged in information, State v. McCormick 20 W. 95.

Assault under former laws, State v. Ackles 8 W. 462.

Cited 76 W. 586.

**§9385. Verdict Against One of Defendants. §1099.** On an indictment or information against several, if the jury cannot agree upon a verdict as to all, they may render a verdict as to those in regard to whom they do agree, on which a judgment shall be entered accordingly. L. '91 46.

**§9386. Reconsideration by Jury Under Instruction. §1100.** When there is a verdict of conviction in which it appears to the court that the jury have mistaken the law, the court may explain the reason for that opinion, and direct the jury to reconsider the verdict; and if after such reconsideration they return the same verdict, it must be entered, but it shall be good cause for new trial. When there is a verdict of acquittal, the court cannot require the jury to reconsider it. L. '91 46.

**§9387. Acquittal for Insanity. §1101.** When any person indicted or informed against for an offense shall, on trial, be acquitted by reason of insanity, the jury, in giving their verdict of not guilty, shall state that it was given for such cause; and thereupon, if the discharge or going at large of such insane person shall be considered by the court manifestly dangerous to the peace and safety of the community, the court may order him to be committed to prison, or may give him into the care of his friends, if they shall give bonds, with surety to the satisfaction of the court, conditioned that he shall be well and securely kept, otherwise he shall be discharged. L. '91 46.

Insanity as defense, §8694; criminal insane act '07, §9293.

Power to commit to hospital for the insane, §§2827, 2831.

Insane prisoners, §8718.

Act valid and §2827 has no application—evidence of dangerous character—institution where committed, State ex rel. Thompson v. Snell 46 W. 327.

New charge must be filed after acquittal for insanity, Brown v. Urquhart 139 Fed. 846.

This section is due process of law; does not violate right of trial by jury, nor right to counsel; is not cruel punishment—restoration to sanity shown at any time—habeas corpus, Ex parte Brown 39 W. 160.



**§9388. Verdict—Call of Jury.** §1102. When the jury have agreed upon their verdict, they must be conducted into court by the officer having them in charge. Their names must then be called, and if all appear, their verdict must be rendered in open court; and if all do not appear, the rest must be discharged without giving a verdict, and the cause must be tried again. L. '91 46.

Part of verdict may be rejected as surplusage, *State v. Snider* 32 W. 299.

With evidence tending to show every fact necessary case should not be taken from jury, *State v. Elwood* 15 W. 453.

Non-suit in criminal case is asking the court to direct acquittal—motion must be specific, *State v. Hyde* 22 W. 551.

Court properly refused to direct verdict of not guilty on circumstantial evidence in burglary charge, *State v. Norris* 27 W. 453.

Verdict under instruction of specified amount of money in robbery is sustained if any money taken, *State v. Hyde* 22 W. 551.

Jury on acquittal of defendant can not find complaint malicious, *In re Pemstick*

3 W. 672.

Verdict in rape sustained by sufficient evidence, *State v. Phelps* 22 W. 181.

Verdict for burglary of "warehouse buildings" sustained when part of building a lodging house, *State v. Dolson* 22 W. 259.

Reception of verdict is ministerial act and may be performed on non-judicial days, *State v. Straub* 16 W. 111.

Verdict rendered when defendant present must object to it or he is held to consent and can not assign error. *State v. Greer* 11 W. 244.

Upon return of verdict court may correct erroneous instruction and direct jury to reconsider verdict, *Doctor Jack v. Territory* 2 W. T. 101.

**§9389. Court Shall Fix Punishment—Form of Verdict.** §1103.—311. When the defendant is found guilty, the court, and not the jury shall fix the amount of fine and the punishment to be inflicted. The verdict of the jury may be substantially in the following form:

We, the jury, in the case of the State of Washington, plaintiff, against ——— defendant find the defendant (guilty or not guilty, as the case may be). (Signed,) A. B., foreman.

Jury can decide only whether or not defendant is guilty, *In re Permstick*, 3 W. 672. nor is one-half maximum penalty, *State v. Bliss* 27 W. 463.

Immaterial who prepares form of verdict, *State v. Klein*, 38 W. 475.

Judgment of thirteen years for burglary not excessive, *State v. Burton* 27 W. 528;

Verdict signed by all of jurors is good, *State v. Cronin* 20 W. 512.

Verdicts of murder in the first degree held good, *Leschi v. Territory* 1 W. T. 14; *Timmerman v. Territory* 3 W. T. 445.

**§9390. Judgment Follows Verdict—Costs.** §1104.—342. When the defendant is found guilty the court shall render judgment accordingly, and the defendant shall be liable for all costs, unless the court or jury trying the cause expressly find otherwise.

Judgments, etc. §9303.

Jury, clerk's and sheriff's fees are prop-

erly chargeable, *State v. Armstrong* 29 W. 57.

## VENUE.

Accessory, where tried §9135.

Change of venue by state at trial §9380.

Kidnaping §8943.

Public conveyances, crimes on §8728.

**§9391. Offense in Two Counties.** §959.—196. When a public offense has been committed partly in one county and partly in another or the act or effects, constituting or requisite to the consummation of the offense occur in two or more counties, the jurisdiction is in either county.

Rights of parties accused, §9148.

Trial of accessories, §9135.

Offense being tried in wrong country, procedure, §9380.

Where evidence shows killing in one county though body found in another, first county has jurisdiction, *State v. Fillpot*, 51 W. 223.

Homicide on Indian reservation is in sole jurisdiction of United States, *Shapoonmash v. United States* 1 W. T. 189.

Defendant may be convicted of larceny though not present at taking, *State v. Duncan* 7 W. 336; but see *State v. Brookhouse* 10 W. 87; overruled in *State v. Gifford* 19 W. 464.

**§9392. Offense Within One Hundred Rods of Boundary.** §960. Offenses committed on the boundary line of two counties or within one hundred rods of the dividing line between them, may be alleged in the indictment or information to have been committed in either of them, and may be prosecuted and punished in either county. L. '91 46.

**§9393. Persons Liable to Criminal Law. §3.** Every person, whether an inhabitant of this state, or of any other state, territory, or country, may be tried and punished under the laws of this state for an offense committed by him therein, except when such offense is cognizable exclusively in the courts of the United States. L. '91 46.

Persons punishable, §8689.

No less crime to murder foreigner than citizen. *Smith v. U. S.*, 1 W. T. 262.

State court has jurisdiction over alien murderer, *State v. Champoux* 33 W. 339.

Jurisdiction over territory jointly occupied by two nations under treaty, *Watts v. Territory*, 1 W. T. 288.

Indian having severed tribal relations

may be prosecuted in state courts though crime committed in reservation, *State v. Williams* 13 W. 335.

Indian retaining tribal relations may be prosecuted for crime committed outside reservation, *Id.*

Information against an Indian in county having reservations need not allege either severance of tribal relations or that crime was committed outside reservation, *Id.*

**§9394. Actions Local. §4.** Except as otherwise specially provided by statute, all criminal actions shall be commenced and tried in the county where the offense was committed. L. '91 46.

Offenses triable in two or more counties, that such place is in the county, *State v. Michel* 20 W. 162.

Change of venue, §9397.

Information charging homicide in certain county need not allege place of death—evidence, *State v. Baldwin*, 15 W. 15.

Place of crime may be shown by testimony of the place and other testimony

Venue of crime by use of commercial paper is where intent and refusal to account occurred, *State v. Hoshier* 26 W. 643.

Charge that crime was committed in "city of Seattle" is good, the court taking judicial notice that such city is in King county, *Schilling v. Territory* 2 W. T. 283.

**§9395. Action Follows Personal Property. §961.—198.** When property taken in one county by burglary, robbery, larceny or embezzlement, has been brought into another county, the jurisdiction is in either county.

Venue in county where property taken invalid, *State v. Carroll* 55 W. 588.

Larceny of cattle prosecuted where cattle taken or found, *State v. Kyle* 14 W. 550.

Money coming into hands of accused in certain county and his duties regarding it in such county satisfies venue in embezzlement, *State v. Whiteman* 9 W. 402.

**§9396. Action Follows Subject of Crime. §962.—199.** If any mortal wound is given, or poison administered in one county, and death, by means thereof ensue in another, the jurisdiction is in either.

## CHAPTER 86.

### VENUE.

**§9397. Change of Venue. §1072.** The defendant may show to the court, by affidavit, that he believes he cannot receive a fair trial in the county where the action is pending, owing to the prejudice of the judge, or to excitement or prejudice against the defendant in the county, or some part thereof, and may thereupon demand to be tried in another county. The application shall not be granted on the ground of excitement or prejudice other than prejudice of the judge, unless the affidavit of the defendant be supported by other evidence; nor in any case unless the judge is satisfied the ground upon which the application is made does exist.

Change of venue in criminal case is in discretion of court, *State v. Wright* 97 W. 304.

Offenses must be tried in county, Const., art. 1, §22, §9394; offenses triable in two or more counties, §9391.

Trial of accessories, §§8695, 9132.

The granting of a change of venue on the ground of local prejudice rests in the discretion of the trial court, *State v. Welty*, 65 W. 244.

Judge being brother of prosecuting wit-

ness is not ground of change, *State v. Strodemeier* 40 W. 608.

Inflamed public sentiment as ground—calling of witnesses is discretionary, *State v. Champoux* 33 W. 339.

Court receiving case has full power and state may amend information, *State v. Lyts* 25 W. 347.

Change of venue is discretionary and will not be corrected unless abused—affidavit of witness introduced he can not testify orally, *State v. Straub* 16 W. 111.

**§9398. Change on Prejudice of Judge—Transcript. §1073.** When the affidavit is founded on prejudice of the judge, the court may, in its discretion, grant a change of venue to some other county, or may continue the cause until such time as it can be tried by another judge in the same county; if the affidavit is founded upon excitement or prejudice in the county against the defendant, the court may, in its discretion, grant a change of venue to the most convenient county. The clerk must, upon the granting of a change



at the place of trial, make a transcript of the proceedings and order of court, and, having sealed up the same with the original papers, deliver them to the sheriff, who must without delay deposit them in the clerk's office of the proper county, and make his return accordingly.

Change for prejudice of judge in civil judge in same county is discretionary case §8546. State v. Hawkins 23 W. 289.

Whether change granted to another Supreme Court will not disturb refusal county or that cause be tried by another of change of venue unless most clearly abused, Edwards v. State 2 W. 291.

§9399. **Change by Consent.** §1075.—313. The court may at its discretion, at any time order a change of venue or place of trial to any county in the state, upon the written consent or agreement of the prosecuting attorney and the defendant.

§9400. **Recognizance of Defendant and Witnesses.** §1076. When a change of venue is ordered, if the offense be bailable, the court shall recognize the defendant, and in all cases the witnesses, to appear at the court to which the change of venue was granted.

## JUSTICES' PROCEDURE

**APPEALS** §9401.

**ARREST AND BAIL** §9410.

**CONTEMPTS** §9420.

**CONTINUANCES** §9427.

Coroner, justice may act as §1754.

**COSTS AND FEES** §9428.

**CRIMINAL PROCEDURE** §9433.

**ELECTION, ETC., JUSTICES** §9449.

**EVIDENCE** §9494.

**EXECUTIONS** §9506.

**FEES AND COSTS** §9428.

**FORMS, CIVIL** §9529.

**ARNISHMENT** §9530.

**JUDGMENT** §9554.

**JURISDICTION** §9558.

**LAND CASES** §9566.

Ne exeat, may issue §8222.

**PEACE BONDS** §9567.

**PLEADINGS** §9584.

**PRELIMINARY EXAMINATIONS** §9597.

**REPLEVIN** §9614.

**SUMMONS** §9625.

**TRIALS** §9640.

**VENUE** §9649.

### APPEALS.

§9401. **Appeals to Superior Court.** §1858. Any person considering himself aggrieved by the judgment or decision of a Justice of the Peace in a civil action may, in person or by his agent, appeal therefrom to the Superior Court of the same county where the judgment was rendered or the decision made: Provided, There shall be no appeal allowed unless the amount in controversy exclusive of costs, shall exceed the sum of twenty dollars. L'05 41.

Appeals in criminal cases, §9444.

Certiorari supplements appeal, §8225.

Pleadings may be amended on appeal, §9594.

Appellant shall pay costs on appeal from justice if he does not obtain more favorable judgment, §7468.

Under §3550, damages included in amount in controversy on appeal, State ex C. M. & P. S. Ry. v. Court, 73 W.

Certiorari and appeal are concurrent

remedies, Woodbury v. Henningsen 11 W. 12.

Where only error committed by justice was in taxing costs such should be corrected and judgment affirmed, State v. White 8 W. 230.

No appeal lies from judgment by default on personal service and mandamus will not lie to compel superior court to take jurisdiction, State ex rel. Pacific Coast Steamship Co. v. Superior Court 12 W. 548.

§9402. **How Taken.** §1859. Such appeal shall be taken by filing a notice of appeal with the justice and serving a copy on the adverse party or his attorney, and, unless such appeal be by a county, city, or school district, filing a bond or undertaking, as herein provided, within twenty days after the judgment is rendered or the decision made. No appeal, except when such appeals are by a county, city, or school district, shall be allowed in any case, unless a bond or an undertaking shall be executed on the part of the appellant and filed with and approved by the justice, with one or more sureties, in the sum of one hundred dollars, to the effect that the appellant will pay all costs that may be awarded against him on the appeal; or if a stay of proceedings before the justice be claimed, except by a county, city, or school district, a bond or undertaking, with two or more sureties, to be approved, by the justice, in a sum equal to twice the amount of the judgment and costs, to the effect that the appellant will pay such judgment, including costs, as may be rendered against him on the appeal. L. '91 66

Notice of appeal from judgment "herebefore rendered" is sufficient, State ex rel. Maltby v. Superior Court 7 W. 223.

Notice must be filed before served—prohibition of superior court jurisdiction, State ex rel. Alladio v. Superior Court 17 W. 54; Filing and service of notice operates as appeal, but bond necessary for stay, Seattle Coal etc. Co. v. Lewis 1 W. T. 488. Defects of notice that will not invalidate McKiever v. Manchester 1 W. 255.

**§9403. Allowance of Appeal.** §1861. Upon appeal being taken, and a bond filed to stay all proceedings, the justice shall allow the same, and make an entry of such allowance in his docket, and all further proceedings on the judgment before the justice shall thereupon be suspended; and if in the meantime execution shall have been issued, the justice shall give the appellant a certificate that such appeal has been allowed. L. '91 66.

**§9404. Execution Recalled.** §1862.—174. On such certificate being presented to the officer holding the execution, he shall forthwith release the property of the defendant that may have been taken on execution; and if the body of the defendant have been taken on execution, he shall be discharged from imprisonment. L. '91 66.

**§9405. Transcript.** §1863. Within ten days after the appeal has been taken in a civil action or proceeding, the appellant shall furnish the superior court with a transcript of all entries made in the justice's docket relating to the case, together with all the process and other papers relating to the action, and file(d) with the justice, which shall be certified by such justice to be correct; and upon the filing of such transcript, the superior court shall become possessed of the cause, and shall proceed in the same manner, as near as may be, as in actions originally commenced in that court, except as herein otherwise provided. L. '91 66.

When transcript is not filed within ten days it is in discretion of court to dismiss case, State ex rel. Cline v. Campbell 5 W. 517; State ex rel. Gardner v. Superior Court 9 W. 307.

**§9406. Same Pleadings.** §1864.—176. The issue before the justice shall be tried in the superior court without other or new pleadings, unless otherwise directed by the court.

It is discretionary with superior court to allow amendments, State ex rel. Bailey v. Superior Court 3 W. 705.

Amendments are allowed in the discretion of the court, Newbury v. Farmer 1 W. T. 183.

Allowance of amendments cannot be con-

trolled by prohibition, State ex rel. Bagley v. Superior Court 3 W. 705.

Error of justice in ruling on jurisdiction may be raised on appeal though case has been tried on merits—return cannot be amended, Knoff v. Co-Operative Colony 1 W. 57.

**§9407. Compelling Transcript.** §1865. Upon an appeal being taken and allowed, the superior court may, by rule and attachment, compel the justice to make and deliver to the appellant a certified transcript of the proceedings, upon paying to such justice the fees allowed by law for making such transcript, and whenever the court is satisfied that the return of the justice is substantially erroneous or defective, it may, by rule and attachment, compel him to amend the same. L. '91 66.

**§9408. Defective Bond—Dismissal.** §1866.—178. No appeal allowed by a justice shall be dismissed on account of the bond being defective, if the appellant will, before the motion is determined, execute and file in the superior court such a bond as he should have executed at the time of taking the appeal, and pay all costs that shall have accrued by reason of such defect.

**§9409. Judgment on Bond.** §1867.—179. In all cases of appeal to the superior court, if on the trial anew in such court, the judgment be against the appellant, in whole or in part, such judgment shall be rendered against him and his sureties in the bond for the appeal.

In signing bond surety submits to jurisdiction of superior court, Cline v. Mitchell 1 W. 24.

## ARREST AND BAIL.

**§9410. Arrest and Bail.** §1746.—58. A justice of the peace shall issue a warrant of arrest in all such cases within his jurisdiction, and for such causes, and upon such proof as is provided for an order for a warrant in the act regulating civil actions.



No imprisonment for debt except in case of absconding debtors, Const., art 1, §17. No arrest—justice not liable in case of arrest. Hayes v. Hutchinson & Shields 81 W. 394.

§9411. — **Plaintiff's Bond.** §1747.—59. Before issuing the warrant of arrest, the justice shall require a bond on part of the plaintiff, with one or more sureties, to the effect that if the defendant recover judgment, the plaintiff will pay all costs that may be awarded to the defendant, and all damages which may be sustained by reason of the arrest, not exceeding the sum specified in the bond, which shall be at least one hundred dollars.

§9412. **Arrest of Defendant.** §1748.—60. The warrant shall be served by arresting the defendant and taking him before the justice of the peace who issued the same; but if such justice at the return thereof be absent or unable to try the action, the officer shall immediately take the defendant to the nearest justice of the same county, who shall take cognizance of the action, and proceed thereon as if the warrant had been issued by himself.

§9413. **Notice to Plaintiff.** §1749.—61. The officer making the arrest shall immediately give notice thereof to the plaintiff, his agent or attorney, and indorse on the warrant the time of the arrest, and the time of serving notice on the plaintiff.

§9414. **Time Defendant May Be Held.** §1750.—62. When a defendant is brought before a justice on a warrant, he shall be detained in the custody of the officer until he shall be discharged according to law; but in no case shall the defendant be detained longer than twenty-four hours from the time he shall be brought before the justice, unless within that time the trial of the action shall be commenced, or unless it has been delayed at the instance of the defendant.

§9415. **Defendant's Discharge—Bond.** §1751.—63. If the defendant, on his appearance, demand a continuance, the same may be granted, on condition that he remain in custody, or execute and file with the justice a bond with one or more sufficient sureties to be approved by the justice, to the effect [effect] that he will render himself amenable to the process of the court; or that the sureties will pay to plaintiff the amount of any judgment which he may recover in the action. On filing such bond, the justice shall order the defendant to be discharged from custody.

**AN ACT relating to bail bonds and recognizance in Justice's Courts, and providing for the acceptance of money in lieu of other security.** Approved March 4, 1919. L. '19 ch 76.

§9415a. **Money Bail.** §1. Justices of the Peace or Committing Magistrates may accept money as bail from persons charged with bailable offenses, and for the appearance of witnesses in all cases provided by law for the recognizance of witnesses. The amount of such bail or recognizance in each case shall be determined by the court in its discretion, and may from time to time be increased or decreased as circumstances may justify. The money to be received and accounted for in the same manner as provided by law for the Superior Courts.

§9416. **Officer Failing to Serve Process.** §1752.—64. If any officer, without showing good cause therefor, fail to execute any process to him delivered, and make due return thereof, or make a false return, such officer for every such offense, shall pay to the party injured ten dollars, and all damage such party may have sustained, by reason thereof, to be recovered in a civil action.

§9417. **Guardian ad Litem for Infant.** §1753.—65. No action shall be commenced by an infant plaintiff, except by his guardian, or until a next friend for such infant shall have been appointed. Whenever requested, the justice shall appoint some suitable person, who shall consent thereto in writing, to be named by such plaintiff, to act as his next friend in such action, who shall be responsible for the costs therein.

§9418. — **Defendant.** §1754.—66. After service and return of process against an infant defendant, the action shall not be further prosecuted, until a guardian for such infant shall have been appointed. Upon the request of such defendant, the justice shall appoint some person who shall consent thereto in writing, to be guardian of the defendant in defense of the

action; and if the defendant shall not appear on the return day of the process, or if he neglect or refuse to nominate such guardian, the justice may, at the request of the plaintiff, appoint any discreet person as such guardian. The consent of the guardian or next friend, shall be filed with the justice; and such guardian for the defendant shall not be liable for any costs in the action.

**§9419. One Hour for Appearance. §1755.—67.** The parties shall be entitled to one hour in which to make their appearance after the time mentioned in the notice for appearance, but shall not be required to remain longer than that time, unless both parties appear; and the justice being present, is actually engaged in the trial of another action or proceeding; in such case he may postpone the time of appearance until the close of such trial.

Corporeal presence in court is not ap- one hour, *McCoy v. Bell* 1 W. 504.  
pearance and judgment must be given after

## CONTEMPTS.

### OF PROCEEDINGS FOR CONTEMPT BEFORE JUSTICES OF THE PEACE.

**§9420. Contempt. §1842.—154.** In the following cases, and no others, a justice of the peace may punish for contempt:

1. Persons guilty of disorderly, contemptuous and insolent behavior towards such justice while engaged in the trial of a cause, or in rendering judgment, or in any judicial proceedings, which tend to interrupt such proceedings, or impair the respect due to his authority.

2. Persons guilty of any breach of the peace, noise or disturbance, tending to interrupt the official proceedings of such justice.

3. Persons guilty of resistance or disobedience to any lawful order or process made or issued by him.

Contempts of court generally, §7442.  
Power of court, §8564.

The following provisions apply to arbitrators, §7347.

**§9421. — Punishment. §1843.—155.** Punishment for contempt may be by fine, not exceeding twenty-five dollars or by imprisonment in the county jail not exceeding two days, at the discretion of the justice, unless otherwise provided by statute.

**§9422. Hearing. §1844.—156.** No person shall be punished for a contempt before a justice of the peace, until an opportunity shall have been given to him to be heard in his defense; and for that purpose the justice may issue his warrant to bring the offender before him.

**§9423. Contempt in Justice's Presence. §1845.—157.** If the offender be present, he may be summarily arraigned by the justice and proceeded against in the same manner as if a warrant had been previously issued, and the offender arrested thereon.

**§9424. Form of Warrant. §1846.—158.** The warrant for contempt may be in the following form:

State of Washington ——— County—ss.

To the Sheriff or any Constable of said County:

In the name of the State of Washington, you are hereby commanded to apprehend A B, and bring him before J P, one of the justices of the peace of said county, at his office in said county, to show cause why he should not be convicted of a contempt alleged to have been committed on the ——— day of ———, A. D. 18—, before the said justice, while engaged as a justice of the peace in a judicial proceeding.

Dated this ——— day of ——— A. D., 18—.

J. P. Justice of the Peace.

**§9425. Form of Judgment. §1847.—159.** Upon the conviction of any person for contempt, an entry thereof shall be made in the docket of such justice, stating the particular circumstances of the offense, and the judgment rendered thereon, and may be in the following form:



State of Washington ————— County,—ss.

Whereas, on the — day of — A. D., 18—, while the undersigned, one of the justices of the peace of said county, was engaged in the trial of an action between C D, plaintiff, and E F, defendant, in said county, A. B. of the said county, did interrupt the said proceedings, and impair the respect due to the authority of the undersigned, by (here describe the cause particularly). And whereas, the said A B was thereupon required by the undersigned to answer for the said contempt, and show cause why he should not be convicted thereof. And whereas, the said A B did not show cause against the said charge—be it therefor[e] ordered that the said A B is adjudged to be guilty and is convicted of the contempt aforesaid, and is adjudged by the undersigned to pay a fine of — dollars, (or be imprisoned, etc.)

Dated this — day of —, A. D. 18—.

J. P. Justice of the Peace.

§9426. **Commitment.** §1848.—160. If any person convicted of a contempt be adjudged to be imprisoned, a warrant of commitment shall be issued by the justice. If he be adjudged to pay a fine, a process may be issued to collect the same; and when so collected it shall forthwith be paid by the justice into the county treasury.

### CONTINUANCES.

§9427. **Continuances.** §1769.—81. When the pleadings of the parties shall have taken place, the justice shall, upon the application of either party, if the defendant be not under arrest, and sufficient cause be shown on oath, continue the case for any time not exceeding sixty days. If the continuance be on account of absence of testimony, it shall be for such reasonable time as will enable the party to procure such testimony, and shall be at the cost of the party applying therefor, unless otherwise ordered by the justice; and in all other respects shall be governed by the law applicable to continuances in the superior court.

Continuance when jury is demanded, continuance is not general appearance, Nelson v. Campbell 1 W. 261.

Continuance in superior court, §8485. Cause was continued to Sunday and justice granting continuance for more time lost jurisdiction, Taylor v. Ringer 1 than sixty days loses jurisdiction—asking W. T. 539.

### COSTS AND FEES.

Guardian ad litem liable for §9417.

§9428. **Tender of Judgment—Costs.** §1784.—66. If the defendant, at any time before the trial, offer, in writing, to allow judgment to be taken against him for a specified sum, the plaintiff may immediately have judgment therefor, with costs then accrued; but if he do not accept such offer before trial, and fail to recover on the trial of the action, a sum greater than the offer, such plaintiff shall not recover any costs that may accrue after he shall have been notified of the offer of the defendant, but such costs shall be adjudged against him, and if he recover, deducted from his recovery. But the offer and failure to accept it, shall not be given in evidence to affect the recovery, otherwise than as to costs, as above provided.

Tender of money in superior court, §7466.

§9429. **Judgment for Costs—Attorneys' Fees.** §1785. When the prevailing party is entitled to recover costs in a civil action before a justice of the peace, the justice shall add the amount thereof to the judgment; in case of failure of the plaintiff to recover or of dismissal of the action, the justice shall enter up a judgment in favor of the defendant for the amount of his costs; and in case any party so entitled to costs is represented in the action by an attorney, the justice shall include an attorney's fee of five dollars as part of the costs: Provided, however, That the plaintiff shall not be entitled to such attorney fee unless he obtain, exclusive of costs, a judgment in the sum of five dollars or more. L. '15 143, R.&B. §1862.

AN ACT in relation to fees and compensation of justices of the peace and repealing section 1864 of Remington & Ballinger's Annotated Codes and Statutes of Washington. Approved March 17, 1915. Laws '15 p 372.

**§9430. Fees; Schedule.** §1. The fees and compensation of justices of the peace shall be as follows, to-wit:

When each case is filed the sum of \$2.00 shall be paid by the plaintiff, which said sum shall include the docketing of the cause, the issuing of notice and summons, the trial of the case and the entering of judgment: Provided, that no further fee shall be required of either party to the suit for issuing subpoena, for approving any bond, including justification, incident to the case, or for orders and filing of publication of summons, or for any continuance by either party, or for issuing any writ of replevin, attachment and one writ of garnishment, or order, transcript and filings on change of venue. For each additional writ of garnishment a fee of 50 cents shall be charged.

The sum of \$2.00 shall be paid by the party taking the change of venue to the justice to whom the case is transferred: Provided, that said sum shall include all fees for transcripts of garnishments or other proceedings incident to the main action.

For transcript of judgment the sum of \$1.00 shall be paid by the party applying therefor, which said sum shall include all fees for transcript of garnishment or other proceedings incident to the main action and for approval of bonds on appeal.

For hearing of a cause occupying more than one day in the trial thereof an additional fee of two dollars (\$2.00) shall be charged for each and every day so occupied after the first day of the trial: Provided, This act shall not apply to any continuance granted for any reason or cause other than as stated in this paragraph: Provided further, This provision shall not apply to justices of the peace receiving a fixed salary.

For order and filings for commission to take depositions.....	\$ .50
For issuing writ of venire.....	.50
For taking affidavits and acknowledgments, each.....	.25
For taking depositions, each folio.....	.10
For issuing warrants in criminal cases.....	.50
For taking recognizance of bail, including justification.....	.75
For committing to jail.....	.50

L. '19 ch 143.

**§9431. Fees of Salaried Justices.** §2. In any civil action commenced before or transferred to a justice of the peace receiving a salary, the plaintiff may, at the time of such commencement or transfer, pay to such justice the sum of two dollars, which sum shall be all the fees and charges which any party to such action shall be compelled to pay to such justice up to and including the rendition of judgment in such action, unless process in replevin, attachment or garnishment shall issue therein, in which case the party procuring such process may pay to such justice the sum of one dollar as full payment for the fees and charges of such justice incident to the proceedings under such process; but in case said action is transferred from such justice before final judgment, such justice shall repay to any party making such payments any sum in excess of what said party would have been compelled to pay by section one hereof.

**§9432. No Other Fees to Be Collected.** §3. No justice of the peace in any civil action or proceeding shall be entitled to or receive any fees or compensations not provided for by this act.

### CRIMINAL PROCEDURE.

Actions on forfeited recognizances §9351. Evidence for state immunity does not apply §9220.  
Costs in peace bonds §9574. Fugitives from justice, powers §9227.

**§9433. Criminal Jurisdiction.** §1886. Justices of the peace shall have jurisdiction concurrent with the superior courts of all misdemeanors and gross misdemeanors committed in or which may be tried in their respective counties: Provided, That justices of the peace in cities of the first class shall in no event impose greater punishment than a fine of five hundred dollars, or imprisonment in the county jail for six months; and justices of the peace other than those elected in cities of the first class shall in no event impose greater punishment than a fine of one hundred dollars, or imprisonment in the county jail for thirty days. L'09 377.



Change of venue will not lie from police court city 3rd class to justice, *State ex Kingins v. Woolson* 98 W. 505.

Supreme court prohibition will lie to prevent superior court acting as committing magistrate if case within justice's jurisdiction, *State ex Murphy v. Taylor* 101 W. 148.

Search warrants for liquor regardless of amount sustained, *State ex Hodge v. Gordon* 95 W. 289.

Jurisdiction of vagrancy cases, §9131-121.

All forfeited recognizances to be certified to county clerk, §9351.

Civil jurisdiction, §9564

Mines and shafts exposed, jurisdiction, §3811.

School law, criminal jurisdiction, §5225.

§9434. **Warrants on Complaint.** §1888.—200. Any justice shall, on complaint on oath in writing before him, charging any person with the commission of any crime or misdemeanor, of which he has jurisdiction, issue a warrant for the arrest of such person, and cause him to be brought forthwith before him for trial.

Supreme court will prohibit superior case within justice's jurisdiction, *State ex judge sitting as committing magistrate if Murphy v. Taylor* 101 W. 148.

§9435. **Arrests in Presence of Justice.** §1889.—201. When any offense is committed in view of any justice he may, by verbal direction to any constable, or if no constable be present, to any citizen, cause such constable or citizen to arrest such offender, and keep him in custody for the space of one hour, unless such offender shall sooner be taken from such custody by virtue of a warrant issued on complaint on oath. But such person so arrested, shall not be confined in jail, nor put upon any trial, until arrested by virtue of such warrant.

§9435a. **Trial.** On the return of any warrant issued by him, it shall be the duty of the justice to docket the cause, and unless continuance be granted, forthwith to hear and determine the cause, and either acquit, convict and punish or hold to bail the offender, if the offense be bailable and prove to be one which should be tried in the superior court, or in default of bail, commit him to jail, as the facts and law may justify.

Contempt of justice's court, §9420.

Threats and violent language in presence

of justice of the peace, bond may be required, §9580.

§9436. **Trial—Jury—Magistrate.** §1890. In all trials for offenses within the jurisdiction of a justice of the peace, the defendant or the state may demand a jury, which shall consist of six, or a less number, agreed upon by the state and accused, to be impaneled and sworn as in civil cases, or the trial may be by the justice. When the complaint is for a crime or misdemeanor in the exclusive jurisdiction of the superior court, the justice hears the case as a committing magistrate, and no jury shall be allowed. L. '91 18.

Trial by jury in civil cases, §9640.

§9437. **Punishment or Recognizance—Answer.** §1891. Such justice or jury, if they find the prisoner guilty, shall assess his punishment; or if, in their opinion, the punishment they are authorized to assess is not adequate to the offense, they may so find, and in such case the justice shall order such defendant to enter recognizance to appear in the superior court of the county, and shall also recognize the witnesses, and proceed as in proceedings by a committing magistrate. L. '91 18.

Recognizance if justice cannot punish §9603.

Jury should assess punishment—if justice

assesses punishment appeal and not habeas corpus is remedy. In re Casey 27 W. 686.

Signing of docket is sufficient signature of judgment, *State v. White* 8 W. 230.

§9438. **Defendant May Plead Guilty.** §1892.—204. The defendant may plead guilty to any offense charged.

§9439. **Hearing Must Be Had.** §1893. No justice shall assess a fine, or enter a judgment thereon, until a witness or witnesses have been examined to state the circumstances of the transaction. L. '91 18.

Must hear evidence in civil cases when, §9555.

In peace recognizance evidence shall be taken, §9569.

Preliminary examinations, §9587.

**§9440. Injured Person to Appear—Witnesses.** §1894. In all cases arising under this chapter, if the offense charged involve injury to a particular person who is within the county, it shall be the duty of the justice of the peace to summon the injured person, and all others whose testimony may be deemed material, as witnesses at the trial, and to enforce their attendance by attachment if necessary. L. '91 18.

Compounding crimes, §8782; former laws not repealed, §§9189, 9611.

**§9441. Continuances.** §1895. Continuance may be granted, either on application of the defendant or the prosecuting witness, under the same rules as in civil cases; the cost of such continuance shall abide the event of the prosecution in all cases, and the justice shall recognize the defendant and the witnesses to appear from time to time, in the same manner as is provided in other criminal examinations before him. L. '91 18.

**§9442. Judgment—Commitment for Fine and Costs.** §1896. In all cases of conviction, unless otherwise provided in this chapter, the justice shall enter judgment for the fine and costs against the defendant, and may commit him to jail, to be placed at hard labor until the judgment is satisfied, or the payment thereof be secured, as provided by section fourteen hundred and ninety-seven, [§9443] and further proceedings therein shall be had as in like cases in the superior court; but the defendant shall not be imprisoned for a longer aggregate time than one day for every three dollars of the fine and costs; and a defendant who has been committed shall be discharged at any time upon payment of such part of the fine and costs as remains unpaid after deducting from the whole amount any previous payment and three dollars for every day he has been imprisoned upon the commitment. L. '91 18.

Power to sentence to jail, later provision, §9433. that it is property of "B" and "divers other persons" and not the property of defendant

Prisoner may be put to work, §8714.

Warrant for defacing buildings reciting

and building was on highway is good, State v. Yourex 30 W. 611.

**§9443. Stay—Bond.** §1897.—209. Every defendant may stay the execution for the fine and costs for thirty days, by procuring sufficient sureties, to be approved by the justice, to enter into recognizance before him for the payment of the fine and costs; the entry of such recognizance shall be made on the docket of the justice and signed by the sureties, and shall have the same effect as a judgment, and if the same be not paid in thirty days, the justice shall proceed as in like cases in the superior court.

It seems that the right to stay is taken away in superior court judgments, §9317.

**§9444. Appeal to Superior Court.** §6. Every person convicted before a justice of the peace of any offense may appeal from the judgment, within ten days thereafter, to the superior court. The appeal shall be taken by orally giving notice thereof at the time the judgment is rendered, or by serving a written notice thereof upon the justice at any time after the judgment, and within the time allowed for taking the appeal; when the notice is given orally, the justice shall enter the same in his docket. The appellant shall be committed to the jail of the county until he shall recognize or give a bond to the state, in such reasonable sum, with such sureties as said justice may require, with condition to appear at the court appealed to, and there prosecute his appeal, and to abide the sentence of the court thereon, if not revised by a higher court. L. '91 66;

after five months, State v. Buffum 94 W. 25.

Appeal not brought to trial for over year properly dismissed, State v. Greenwald 102 W. 593.

Appeals in civil cases, §9401.

Defendant on appeal to superior court cannot invoke statute requiring his trial in that court within sixty days, State v. Jones 80 W. 335.

Appeal and trial de novo greater fine than justices jurisdiction may be imposed, State v. Hagamori 57 W. 623.

Defendants must prosecute appeal to be entitled to dismissal under §9143, State v. Parmeter 49 W. 435.

Complaint cannot be amended on appeal, State v. Hamshaw 61 W. 390.

**§9445. No Fees in Advance—Default.** §7. The appellant in a criminal action shall not be required to advance any fees in claiming his appeal, nor in prosecuting the same; but if convicted in the appellate court, or if sentenced for failing to prosecute his appeal, he may be required, as a part of the



sentence, to pay the costs of the prosecution. If the appellant shall fail to enter and prosecute his appeal, he shall be defaulted on his recognizance, if any was taken, and the superior court may award sentence against him for the offense whereof he was convicted, in like manner as if he had been convicted thereof in that court; and if he be not then in custody, process may be issued to bring him into court to receive sentence.

§9446. **Appeal—Witnesses—Transcript.** §8. Upon an appeal being taken in a criminal action, the justice shall require the witnesses to give recognizances for their appearance in the superior court, or if they are not present, indorse their names on the copy of proceeding. He shall, on such appeal, make and certify a copy of the conviction and other proceedings in the case, and transmit the same, together with the recognizance, and an abstract bill of the costs, to the clerk of the court appealed to, who shall issue a subpoena for the witnesses, if they are not under recognizance.

If records lost they may be restored under §7780, State ex rel. Brockway v. Whitehead 88 W. 549.

§9447. **Fines to Be Paid Over to County Treasurer—Affidavit—Treasurer's Receipt.** §1901-213. It shall be the duty of every justice on the first Mondays in January and July in every year, and on going out of office, to pay over to the treasurer of his county all money he may have received on account of fines, and all fees which may have remained unclaimed in his hands for twelve months; and he shall, at the same time, deliver to such treasurer a statement in writing, showing by items the sources from which such money was derived, and shall append thereto an affidavit, that he has received no other money for fines, not before paid over to such treasurer, and has no other fees unclaimed for twelve months, in his hands; and the treasurer's receipt therefor he shall file with the auditor, who shall give him a quietus.

Justices in cities shall pay over fees and fines every month, §9486.

#### FORM OF PROCEEDINGS IN CRIMINAL CASES.

§9448. **Forms in Criminal Cases.** §1902. The following or equivalent forms may be used by justices of the peace in criminal proceedings under this act:

#### FORM OF WARRANT.

The State of Washington ——— County. ss.

To the sheriff or any constable of said county: Whereas, A. B. has this day complained in writing under oath to the undersigned, one of the justices of the peace in and for said county, that on the — day of — 18—, at — in said county (here insert the substance of the complaint, whatever it may be),—therefore, in the name of the State of Washington, you are commanded forthwith to apprehend the said C. D. and bring him before me, to be dealt with according to law.

Given under my hand this — day of —, 18—.

J. P. Justice of the Peace.

#### FORM OF SEARCH WARRANT.

The State of Washington, ——— County. ss.

To the sheriff or any constable of said county: Whereas, A. B. has this day made complaint on oath to the undersigned, one of the justices of the peace in and for said county, that the following goods and chattels, to-wit: (Here describe them), the property of the said A. B., have been within — days past, or were on the — day of — by some person or persons unknown, stolen, taken, and carried away out of the possession of the said A. B., in the county aforesaid; and, also, that the said A. B. verily believes that the said goods or a part thereof are concealed in or about the house of C. D., in said county (describe the premises to be searched),—therefore, in the name of the State of Washington, you are commanded that, with the necessary and proper assistance, you enter into the said house (describe the premises to be searched), and then diligently search for the said goods and chattels; and if the same or any part thereof be found on such search, bring the same, and also the same C. D., forthwith before me; to be disposed of according to law.

Given under my hand this — day of —, 18—.

J. P. Justice of the Peace.

# FORM OF COMMITMENT WHERE JUSTICE ON THE TRIAL SHALL FIND THAT HE HAS NOT JURISDICTION IN THE CASE.

The State of Washington ——— County, ss.

To any constable and the keeper of the jail of said county: Whereas, C. D., of ———, etc., has been brought this day before the undersigned, one of the justices of the peace in and for said county, charged, on the oath of A. B., with having, on the ——— day of ——— 18—, in said county, committed the offense of (here state the offense charged in the warrant), and in the progress of the trial of said charge, it appearing to the said justice that the said C. D. has been guilty of the offense of (here state the new offense found on the trial) committed at the time and place aforesaid; and whereas the said C. D. has failed to give bail in the sum of ——— dollars, for his appearance to answer at the next term of the superior court, as required by me, therefore, in the name of the State of Washington, etc. (as in the last form) to receive the said C. D. into your custody in the said jail, and him there safely keep until he be discharged by due course of law.

Given under my hand this ——— day of ———, 18—.

J. P., Justice of the Peace.

## FORM OF WARRANT TO KEEP THE PEACE.

The State of Washington, ——— County, ss.

To the sheriff or any constable of said county: Whereas, A. B. has this day complained in writing under oath to the undersigned, one of the justices of the peace in and for said county, that he has just cause to fear and does fear C. D., late of said county, will (here state the threatened injury or violence, as sworn to),—therefore, in the name of the State of Washington, you are commanded to apprehend the said C. D., and bring him forthwith before me, to show cause why he should not give surety to keep the peace and be of good behavior toward all people of this state, and the said A. B. especially, and further to be dealt with according to law.

Given under my hand this ——— day of ———, 18—.

J. P., Justice of the Peace.

## FORM OF COMMITMENT UPON SENTENCE.

The State of Washington, County of ——— ss.

To any constable and the keeper of the county jail of said county. Whereas, at a justice's court held at my office in said county for the trial of C. D., for the offense hereinafter stated, the said C. D. was convicted of having on the ——— day of ———, 18—, in said county, committed (here state the offense), and upon conviction the said court did adjudge and determine that the said C. D. should be imprisoned in the county jail of said county for ——— days, therefore, you, the said constable, are commanded, in the name of the State of Washington, forthwith to convey and deliver the said C. D. to the said keeper; and you, the said keeper, are hereby commanded to receive the said C. D. into your custody in said jail and him there safely keep until the expiration of said ——— days, or until he shall thence be discharged by due course of law.

Dated this ——— day of ———, 18—.

J. P., Justice of the Peace.

## FORM OF CERTIFICATE OF CONVICTION.

The State of Washington County of ——— ss.

At a justice's court held at my office in said county before me, one of the justices of the peace in and for said county, for the trial of C. D., for the offense hereinafter stated the said C. D. was convicted of having on the ——— day of ———, 18—, in said county committed (here insert the offense), and upon conviction, the said court did adjudge and determine that the said C. D. should pay a fine of ——— dollars (or be imprisoned, as the case may be), and the said fine has been paid to me.

Given under my hand this ——— day of ———, 18—.

J. P., Justice of the Peace.



## FORM OF EXECUTION.

The State of Washington County of \_\_\_\_\_ ss.

To the sheriff or any constable of said county: Whereas, at a justice's court held at my office in said county for the trial of C. D. for the offense hereinafter stated, the said C. D. was convicted of having on the \_\_\_\_\_ day of \_\_\_\_\_, 18—, in said county, committed (here state the offense), and upon conviction the said court did adjudge and determine that the said C. D. should pay a fine of \_\_\_\_\_ dollars, and \_\_\_\_\_ dollars costs; and whereas, the said fine and costs have not been paid, these are, therefore, in the name of the State of Washington, to command you to levy on the goods and chattels, etc. (as in execution in civil cases). L. '91 18.

## ELECTION AND QUALIFICATION.

**AN ACT relating to justices of the peace and to their practice and jurisdiction.** Approved December 1, 1881. C81 §§1680-1938.

FORMER LAWS:—GENERAL ACT '54 p 222, and '55-6 pp 11, 32, '57-8 p 9.

GENERAL ACT '62-3 p 336, and '65-6 p 100.

GENERAL ACT '59-60 p 238, and '60-61 p 65, '61-2 p 58.

GENERAL ACT '73 p 330, and '75 p 51, '77 p 199.

Substitute—**AN ACT relating to the election of justices of the peace.** Approved February 2, 1888. Laws '88 p 120.

**§9449. Justices to Be Elected.** §1. That the qualified electors of each election precinct in this state shall at the next general election and biennially thereafter elect one or more justices of the peace as hereinafter provided.

**§9450. — Number.** §2. Each election precinct shall be entitled to elect one justice of the peace, but the county commissioners of any county may at the time of organizing the precinct or at any time thereafter authorize the election of one additional justice of the peace in any precinct.

**§9451. City and Adjoining Territory.** §3. Each incorporated city in this State together with any adjoining precincts if any there are lying partly within and partly without said city shall for the purposes of this act and for fixing and limiting the number of justices of the peace to be elected in such city be deemed and considered one precinct, and the qualified electors within the limits thereof shall at each general election at the several polling places therein vote for and elect two justices of the peace and no more.

Determination of population, and number of justices, State ex rel. Williams v. Brooks 58 W. 648.

**§9452. Jurisdiction as Heretofore.** §4. The qualification, term of office, duties, powers and jurisdiction of justices of the peace shall be as now provided by law, except that no justice of the peace shall hereafter have jurisdiction of any action brought to enforce or collect any claim or demand which said justice had in any manner attempted to collect as agent or otherwise.

**§9453. Eligibility to Office.** §1691.—3. No person shall be eligible to the office of justice of the peace who is not a qualified voter, and who has not been a resident of the county in which he is elected six months next preceding his election; nor shall any sheriff, coroner, or clerk of the superior court be eligible to, or hold such office.

**§9454. Election—Certificate—Oath.** §1692.—4. The election of justice of the peace shall be conducted, and return of such election made in the same manner, as other elections; and every person duly elected shall be entitled to a certificate of election, and shall take an oath of office; which oath shall be endorsed on the back of the certificate of election, and together with the certificate, filed in the office of the county auditor.

**§9455. Bond—Form.** §1693.—5. Every person elected a justice of the peace, shall, at the time of filing his oath of office in the office of the county auditor, enter into a bond with the board of commissioners of the proper county, with two or more sureties, residents of the county, to be approved by the said auditor, in the sum of five hundred dollars, conditioned that he will faithfully pay over, according to law, all moneys which shall come into his hands, by virtue of his office as justice of the peace. Said bond may be in the following form:

Know all men by these presents, that we, J. P., A. B., and C. D. are held and firmly bound unto the board of county commissioners of the county of \_\_\_\_\_, in the State of Washington, in the sum of five hundred dollars, for the payment of which we jointly and severally bind ourselves, our heirs, executors and administrators.

Sealed with our seals, dated this \_\_\_\_\_ day of \_\_\_\_\_, A. D. 18\_\_\_\_.

Whereas the said J. P. has been duly elected a justice of the peace, in and for the precinct of \_\_\_\_\_, in the county of \_\_\_\_\_, \_\_\_\_\_, A. D. 18\_\_\_\_. Now the condition of the above obligation is such, that if the said J. P. shall faithfully pay over according to law, all moneys which shall come into his hands by virtue of his office as justice of the peace, then this obligation shall be void, otherwise in full force.

J. P., (L. S.)  
A. B., (L. S.)  
C. D., (L. S.)

Bond shall be approved by the county commissioners, §512.

**§9456. Action on Bond.** §1694.—6. Such bond shall be filed in the office of the county auditor; and every person aggrieved by a breach of the condition thereof, may by an action upon the bond, have judgment against the justice and his sureties, for such sum as he may show himself entitled to, with costs and interest at the rate of twenty-five per cent. per annum; and upon any such judgment stay of execution shall not be allowed.

Later act provides bond shall be filed with county clerk, §512.

**§9457. Term of Office.** §1695.—7. Every justice of the peace shall hold his office for the term of two years, and until his successor is elected and qualified; and every justice heretofore elected and qualified, shall continue to act as such until his term of office expires, and until his successor is elected and qualified.

**§9458. Territory of Jurisdiction.** §1702.—14. The jurisdiction of justices of the peace, elected in pursuance of the provisions of this act, shall be co-extensive with the limits of the county in which they are elected or appointed; and no other or greater, whether said county be attached to any other county for judicial purposes or not; but every justice of the peace shall continue to reside in the precinct for which he was elected, or appointed, during his continuance in office.

**Territory of jurisdiction** §9558.

**Jurisdiction, later act** §9560.

All duties shall be performed in precinct, §9560.

Judgments may be transcribed from one county to another, §9517.

Criminal process of police justice in cities of the first class runs throughout the state, §9476.

**§9459. New Precinct, Who Shall Act.** §1703.—15. When a precinct shall be divided, and any justice of the peace of the original precinct shall fall into the new one, he shall continue to discharge the duties of justice of the peace until his term of office expires, and his successor is elected and qualified.

**§9460. Justice Vacating Office—Books to be Delivered.** §1704.—16. If any justice of the peace shall die, resign, or remove out of the precinct for which he may be elected, or his term of office be in any other manner terminated, the docket, books, records and papers appertaining to his office, or relating to any suit, matter or controversy committed to him in his official capacity, shall be delivered to the nearest justice in the precinct, who may thereupon proceed to hear try and determine such matter, suit or controversy, or issue execution thereon, in the same manner as it would have been lawful for the justice before whom such matter or suit was com-



menced to have done: Provided, That if there be no other justice of the peace in said precinct such docket, books, records and papers shall be delivered to the county auditor, who, on demand shall deliver the same to a justice of said precinct, when there shall be one qualified therein, who shall exercise the same powers as though they had originally been delivered to him.

Continued cases are tried by successor, *Nelson v. Campbell* 1 W. 261.

§9461. — **Forfeiture for Failure.** §1705. Every person whose duty it is to deliver over the dockets, books, records and papers, as prescribed in the last section, shall forfeit and pay for the use of the county, one hundred dollars for neglect to perform such duty, which sum may be recovered in an action in the name of the county, from such persons or their bondsmen. L. '86 174.

## CITIES.

**AN ACT relating to justices of the peace and constables in cities having a population of 50,000 or more inhabitants and providing for their election or appointment and fixing their salaries.** Approved March 7, 1913. Laws '13, ch. 41.

§9462. **Number in Cities of Over 50,000 Populaton—Term of Office.** §1 After the taking effect of this act, there shall be in cities of fifty thousand population two justices of the peace and two constables, and one additional justice and one additional constable in such cities for each additional fifty thousand population or a major fraction thereof, to be elected at the general electon to be held in November, 1914, and quadrennially thereafter, whose term of office shall be for the term of four years from the second Monday of January following the election: Provided, There shall not be more than five justices in any city unless the same has a population of 500,000 or more: And provided further, That nothing in this act shall be construed to affect justices of the peace or constables or the offices of justice of the peace or constables in cities having a populaton of less than fifty thousand inhabitants. L. '15 316.

Term of justices four years under ambiguity providing two-year term, with elections quadrennially—justices, etc., not county officers—title of act valid—number of constables, *State ex rel. Fair v. Hamilton* 92 W. 347. County commissioners cannot appoint additional clerks or balliffs *McElwain v. Abraham* 58 W. 26.

§9463. **Increase of Compensation in Cities of 225,000.** §2. That the boards of county commissioners of the counties in which are located cities having a population of two hundred and twenty-five thousand or more are hereby authorized to pay to the justices of the peace in such cities, such compensation in addition to that now provided by law as such boards of county commissioners may deem fit and proper, such additional compensation not to exceed three hundred and fifty dollars (\$350.00) per annum. L. '15 316.

Is section invalid? *State ex rel. Fair v. Hamilton* 92 W. 347.

§9464. **Appointment.** §2. Whenever it shall appear to the board of county commissioners of any county containing a city of fifty thousand or more that such city is entitled to an additional justice and constable as provided in this act, the board of county commissioners are hereby authorized and directed immediately after this act goes into effect to appoint such additional justice and constable in such city, who shall hold office until his successor is elected and qualified at the next general election.

§9465. **Salaries.** §3. The salaries of such justices of the peace in all cities having a population in excess of 100,000 according to the census of the federal government last taken shall be eighteen hundred (1800) dollars per annum.

§9466. **When Salaries as Heretofore.** §4. The salaries of justices of the peace and constables hereafter elected or appointed shall be and remain the same as are now provided by law.

**AN ACT** relating to justices of the peace and constables in cities having a population of 80,000 or more inhabitants as shown by the government census of 1900, providing for their election and appointment, fixing their salaries, authorizing the clerks of such justice courts to administer oaths, and declaring an emergency. Approved March 17, 1909, Laws '09 p 567.

§9467. **Justices, Cities 80,000.** §1. There shall be elected at the general election to be held in November, 1910, and biennially thereafter, in each city having a population of 80,000 or more inhabitants as shown by the government census of 1900, four justices of the peace and four constables, and no more, whose term of office shall be for the period of two years from the second Monday of January following their election.

§9468. **Four Justices—Four Constables.** §2. The board of county commissioners of each county in which there is a city having a population of 80,000 or more inhabitants as shown in the government census of 1900, are hereby authorized and directed, immediately after this act goes into effect, to appoint one additional justice of the peace and one additional constable in such city, so that there shall be four justices of the peace and four constables in such city.

§9469. **Salaries.** §3. The salaries of justices of the peace hereafter elected or appointed in cities having a population of 80,000 or more inhabitants, as shown by the government census of 1900, shall be as follows:—(1st) Salaries of justices of the peace in such cities, \$1,800 per annum, payable as now provided by law. (2nd) Salaries of constables in such cities, \$1,200 per annum, payable as now provided by law.

§9470. **Authority of Clerks.** §4. The clerks of any justice courts provided by this act shall have power to take testimony and administer oaths and affirmations in any action, suit or proceeding in the court for which they are appointed.

**AN ACT** relating to Justices of the Peace and Constables in cities having a population of more than thirty-five thousand (35,000) inhabitants; providing for their election and appointment, fixing their salaries, and declaring an emergency. Approved March 9, 1905. Laws '05 p 209.

§9471. **Cities Over 35,000.** §1. There shall be elected at the general election to be held in November, 1906, and bi-ennially thereafter, in each city having a population of more than thirty-five thousand (35,000) inhabitants and less than eighty thousand (80,000) inhabitants, two justices of the peace and two constables, \* \* \* whose term of office shall be for the period of two years from the second Monday of January following their election.

§9472. **Salaries of.** §3. The salaries of justices of the peace and constables hereafter elected or appointed in cities having a population of more than thirty-five thousand (35,000) inhabitants shall be as follows: (1) Salaries of justices of the peace in cities having a population of more than thirty-five thousand (35,000) inhabitants, fifteen hundred dollars (\$1,500) per annum, payable as now provided by law. (2) Salaries of constables in cities having a population of more than thirty-five thousand (35,000) inhabitants, nine hundred and sixty dollars (\$960:00) per annum, payable as now provided by law.

**Substitute—AN ACT** relating to justices of the peace and constables in cities of the first class and fixing their number and salaries and providing for making one of the justices elected in such cities a police justice, and defining his duties, jurisdiction and powers. Approved March 13, 1899. Laws '99 p 135.

§9473. **Justices in Cities of the First Class.** §1. Each incorporated city of the first class in this state, together with any adjoining precincts, if any there are, lying partly within and partly without said city, shall for the purposes of this act, and for fixing and limiting the number of justices of the peace to be elected in such city, be deemed and considered one precinct, and the qualified electors within the limits thereof shall, at each general election vote for and elect two justices of the peace, who shall be attorneys at law, duly admitted to practice in the supreme court of the state, and one constable.



Every incorporated city and adjoining thousand, §9484.  
territory to be considered one precinct. Courts may determine population to fix  
§9451. salary, *Anderson v. Whatcom County* 15

Election of one justice in cities over five W. 47.

§9474. — **Police Justice.** §2. Within ten days after such election the mayor of the city shall appoint one of the justices so elected the police justice or police judge of such city, who shall before entering upon the duties of his office as police judge, give such additional bond for the faithful performance of his duties as the city council may by ordinance direct.

Jurisdiction in cities of the second class, §9564; criminal, §9433.

§773; third class, §812; fourth class, Term as police justice same as elective  
§§841, 853. term—cannot be removed by mayor, State

Justices' jurisdiction generally; civil, ex rel. *Evans v. Superior Court* 92 W. 375.

§9475. **Powers of Police Justice.** §3. The police judge so appointed, in addition to his powers as justice of the peace, shall have exclusive jurisdiction over all offences defined by any ordinance of the city, and all other actions brought to enforce or recover any license, penalty or forfeiture declared or given by any such ordinance, and full power to forfeit bail bonds and issue execution thereon and full power to forfeit cash bail, and full power and authority to hear and determine all causes, civil or criminal, arising under such ordinance, and pronounce judgment in accordance therewith, Provided, That for the violation of a criminal ordinance no greater punishment shall be imposed than a fine of one hundred dollars, or imprisonment not to exceed thirty days, or by both such fine and imprisonment. In the trial of actions brought for the violation of any city ordinance, no jury shall be allowed. All civil or criminal proceedings before such police judge and judgments rendered by him shall be subject to review in the superior court of the proper county by writ of review or appeal. L. '03 34.

Ordinance may authorize both fine and imprisonment, *Seattle v. Oliver* 78 W. 586. Writ of prohibition will be granted by superior court to prohibit justice from proceeding when it is questionable whether there would be an adequate remedy by appeal, *State ex rel. Belt v. Kennan* 25 W. 621.

Appeal gives trial by jury, *Spokane v. Smith* 37 W. 583.

§9476. **Criminal Process.** §4. All criminal process issued by such police judge shall be in the name of the State of Washington and run throughout the state be directed to the chief of police, marshal or other police officer of any city or to any sheriff or constable in the state and shall be served by him.

§9477. **Prosecutions in Name of City.** §5. All prosecutions for the violation of any city ordinance shall be conducted in the name of the city, and may be upon the complaint of any person.

§9478. **Clerk of Municipal Court.** §6. The police judge of such city shall have power at any time to appoint a clerk to assist such police judge in clerical work incident to the performance of his duties, who shall be paid such salary out of the funds of the city as the city council may by ordinance determine. L. '03 34.

§9479. **Salary of Justice—Court Room.** §7. The salary of such police judge to be paid in addition to the salary paid to justices of the peace in cities of the first class, shall be fixed by the city council by ordinance and such additional salary shall be paid wholly out of the fund of the city, in equal monthly installments. The city shall provide a suitable place for holding court by such police judge, and pay all the expense of maintaining the same.

§9480. **Costs and Fees.** §8. In all civil and criminal cases arising from the violations of city ordinances tried by such police judge he shall charge up as costs in each case, the same fees as are charged by justices of the peace for like services in every action, and all fees so charged and collected by, and all fines and forfeitures paid to, such police judge shall belong to and be paid over by him weekly to the city.

**§9481. Cases That Have Precedence.** §9. Such police judge shall in the conduct of the business of the court give preference to cases arising under ordinances of the city; then to prosecutions for violation of the criminal laws of the State of Washington within the city; then to civil causes coming before him upon change of venue from the other justice of the peace in the city. No change of venue shall be allowed from such police judge in actions brought for violations of city ordinances.

**§9482. Temporary Appointment.** §10. Within five days after the passage of this act the board of county commissioners of the county wherein any such city is located, shall appoint a competent attorney at law residing in such city, who has been duly admitted to practice in the supreme court of the state, to be a justice of the peace of such precinct, and to hold office until his successor has been duly elected and qualified. And within five days after such appointee shall have qualified as required by law, the mayor of any such city shall appoint one of the justices of such precinct the police judge of such city as in this act provided.

**§9483. Judge Pro Tem—Salary.** §11. In case of the temporary absence or inability of the police judge to act the mayor shall appoint, from among the practicing attorneys qualified electors of the city, a police judge pro tempore, who, before entering upon the duties as such, shall take and subscribe an oath as other judicial officers, and while so acting he shall have all the powers of the police judge: Provided, however, Such appointment shall not continue for a longer period than the absence or disability of the police judge. Such police judge pro tempore to receive compensation at the rate of five dollars a day to be paid by the city.

Judgments of temporary judge not sub- 33 W. 30.

ject to collateral attack, Smith v. Sullivan

**Substitute—AN ACT relating to justices of the peace and constables in cities having more than five thousand inhabitants and fixing their number and salaries.** Approved March 13, 1897. Laws '97 p 110.

**§9484. Justices and Constables in Cities of Five Thousand.** §1. There shall be elected at the general election to be held in November 1898, and biennially thereafter in cities of more than five thousand inhabitants only one justice of the peace and one constable and no more.

City cannot take census to determine population—two elected, only one qualified, court will not determine population State ex rel Elwood v. Lovering 78 W. 624

This act by implication repeals former law as to salary, Ogden v. Chehalis County 41 W. 45.

Later act allowing two justices in cities of the first class, §9473.

If cities consolidated no incumbent justice entitled to salary under act, Whitney v. Collier 9 W. 412.

Powers and duties of constables, §1462.

**§9485. Salaries.** §2. The salaries of justices of the peace and constables elected at the general election to be held in November 1898, and biennially thereafter in cities of more than five thousand inhabitants shall be as follows:

1. Salaries of justices of the peace twelve hundred dollars per annum payable as now provided by law.

2. Salaries of constables seven hundred and twenty dollars per annum, payable as now provided by law.

Constables' expenses may be paid by the commissioners, §9492.

March 15, 1893, providing that salary shall not exceed legal fees of county officers, Anderson v. Whatcom County 15 W. 47.

**AN ACT fixing the salaries of justices of the peace and constables, in incorporated cities and towns, having more than five thousand inhabitants, providing for the payment thereof and providing for clerks, office-quarters, books, blanks and stationery for said officers, and declaring an emergency.** Approved February 7, 1891. L. '91 p 8.

**§9486. Fees and Account Of.** §3. The said justices of the peace and constables shall charge and collect for the use of their respective counties, and pay into the county treasury on the first Monday in each month, and on going out of office, all the fees now or hereafter allowed by law paid or chargeable in all cases, except such fees as are a charge against the county or state, and also on the first Monday in each month, and on going out of



office, the said justices of the peace shall pay into the county treasury all moneys they shall have received on account of fines collected for violations of any state law.

Payment of fines and fees into treasury by justices generally, §9447.

**§9487. Fee Book.** §4. Each of the said justices of the peace and constables shall keep a fee book, open to public inspection, during office hours in which must be entered at once, and in detail all fines and fees or compensation of whatever nature, kind or description, collected or chargeable. On the first Monday of each and every month the said justices of the peace and constables must add up each column in their fee books to the first of each month and set down the totals, and on the expiration of the term of said officer they must deliver to the county auditor all fee books kept by them.

**§9488. Fees to Be Paid Into Treasury—Receipts.** §5. All fees and compensation collected from any source and all fines collected for violations of any state law shall be paid to the county treasurer on the first Monday of the following month, and the said justices and constable at the same time shall deliver to such treasurer a statement and copy of the fee book, for the month last past, showing by items the sources from which such fees and fines were derived, and shall append thereto an affidavit that they have received no other money for fees or fines, not before paid over to such treasurer. The treasurer shall file and preserve in his office said statements and affidavits, and shall issue to said justices and constables one original, and one duplicate receipt therefor and the said justices and constables shall preserve one in their offices and file the duplicate with the county auditor, whereupon the auditor shall charge the treasurer with the amount shown by the receipt.

**§9489. Fees Go to Salary Fund.** §6. All fees by this act directed to be paid into the county treasury, when received shall be put into the salary fund of the county treasury.

By later act these fees go into current expense fund, §7022.

**§9490. Salaries, How Paid.** §7. The salaries of the justices of the peace and constables provided for in this act shall be paid monthly out of the county treasury, and from the same funds, out of which other salaried county officers are paid, and it shall be the duty of the county auditor, on the first Monday of each and every month, to draw his warrant upon the county treasurer in favor of each of said justices and constables for the amount of salary due him, under the provisions of this act for the preceding month: Provided That the auditor shall not draw his warrant for the salary of any such officer for any month until the latter, first shall have filed his duplicate receipt with the auditor, properly signed by the treasurer, showing that he has made the statement and settlement for that month as required by this act.

lie, remedy is by appeal, State ex rel. Banks v. Snohomish County 18 W. 160; but when legality of claim has been decided by superior court mandamus will lie, State ex rel. Porter v. Headlee 18 W. 220.

Construction of former law, State ex rel. Banks v. Snohomish County 18 W. 160.

Upon refusal of county commissioners to allow claim for salary mandamus will not

**§9491. Books and Stationery.** §8. In cities of the first class of 100,000 population, or more, where there are two or more justices of the peace, such justices acting as a board shall have the power to appoint one chief clerk at a salary to be fixed by the board of county commissioners and such assistant clerks as may be found necessary by said justices, not exceeding the number of justices unless authority to appoint additional clerks be obtained from the board of county commissioners, the salaries of said clerks to be designated by the county commissioners, and paid in the same manner and at the same time as said justices. The board of county commissioners may allow justices of the peace in cities of the second class and cities of the first class of less than 100,000 population one clerk, and the board of county commissioners shall furnish for the use of each of the justices provided for in this chapter a suitable office room; and also, they shall furnish to each of the said justices and constables all necessary books,

blanks and stationery for conducting the public business of his office; said office room, books, blanks, and stationery to be paid for on the warrant of the auditor out of the general fund of the county. L. '17 345, R.&B. §6547.

**§9492. Expenses of Constables. §9.** In addition to the salary provided to be paid to the constables named in this act, the county commissioners shall pay the actual traveling expenses of said constables while on official duties, to be audited by the board of county commissioners.

**§9493. Collection of Fees. §10.** Said justices and constables shall not in any case, except for the state, or county and other cases provided by law perform any official services unless the fees prescribed for such services are paid in advance, and on such payment the said justices and constables must perform the services required, and shall give receipts for all fees collected, whenever requested. For every failure or refusal to perform official duty when the fees are tendered, said justices and constables shall be liable on their official bonds.

## EVIDENCE.

### OF WITNESSES AND DEPOSITIONS.

**§9494. Witnesses Brought Twenty Miles. §1869.—181.** A subpoena issued by a justice of the peace shall be valid to compel the attendance of a witness in the justice's court, if such witness be within twenty miles of the place of trial.

**§9495. Service of Subpoena. §1870.—182.** A subpoena may be served by any person above the age of eighteen years, by reading it to the witness, or by delivering to him a copy at his usual place of abode.

**§9496. Attachment for Witness. §1871.—183.** Whenever it shall appear to the satisfaction of the justice, by proof made before him, that any person, duly subpoenaed to appear before him in an action, shall have failed, without a just cause, to attend as a witness, in conformity to such subpoena, and the party in whose behalf such subpoena was issued, or his agent, shall make oath that the testimony of such witness is material, and the justice shall have the power to issue an attachment to compel the attendance of such witness: Provided, That no attachment shall issue against a witness in any civil action, unless his fees for mileage and one day's attendance have been tendered or paid in advance, if previously demanded by such witness from the person serving the subpoena.

**§9497. Writ—Arrest—Costs. §1872.—184.** Every such attachment may be directed to any sheriff or constable of the county in which the justice resides, and shall be executed in the same manner as a warrant; and the fees of the officer for issuing and serving the same, shall be paid by the person against whom the same was issued, unless he shows reasonable cause to the satisfaction of the justice, for his omission to attend; in which case the party requiring such attachment shall pay all such costs.

**§9498. Damage for Failure to Appear. §1873.—185.** Every person subpoenaed as aforesaid, and neglecting to appear, shall also be liable to the party in whose behalf he may have been subpoenaed, for all damages which such party may have sustained by reason of his non-appearance: Provided, That such witness had the fees allowed for mileage and one day's attendance paid, or tendered him, in advance, if demanded by him at the time of the service.

**§9499. Adverse Party May Be Compelled to Testify. §1874.—186.** A party to an action may be examined, as a witness, at the instance of the adverse party, and for that purpose may be compelled in the same manner, and subject to the same rules of examination, as any other witness, to testify at the trial, or appear and have his deposition taken.



§9500. — **Rebuttal.** §1875.—187. The examination of a party thus taken may be rebutted by adverse testimony.

§9501. — **Pleadings Stricken.** §1876.—188. If a party refuse to attend and testify at the trial, or give his deposition before trial, when required, his complaint answer or reply, may be stricken out, and judgment taken against him.

§9502. **When Party Issuing Subpoena May Testify** §1877.—189. A party examined by an adverse party may be examined on his own behalf, in respect to any matter pertinent to the issue. But if he testify to any new matter, not responsive to the inquiries put to him by the adverse party or necessary to qualify or explain his answer thereto, or to discharge, when his answer would charge himself, such adverse party may offer himself as a witness, and he shall be so received.

§9503. **Deposition.** §1878.—190. Either party, in an action depending before a justice of the peace, may cause the deposition of a witness therein to be taken, when such witness resides, or is about to go more than twenty miles from the place of trial, or is so sick, infirm, or aged, as to make it probable that he will not be able to attend at the trial.

§9504. — **Notice.** §1879.—191. The notice shall be served, and the deposition taken, certified, and returned, according to the law regulating the taking, of depositions to be read in the superior court.

§9505. **When Deposition May Be Used.** §1880.—192. The justice shall allow every deposition, taken, certified, and returned according to law, to be read on the trial of the cause in which it is taken, in all cases where the same testimony, if given verbally before him, could have been received; but no such deposition shall be read on the trial unless it appears to the justice that the witness, whose deposition is so offered:

1. Is dead or resides more than twenty miles from the place of trial; or
2. Is unable, or cannot safely attend before the justice, on account of sickness, age, or other bodily infirmity.
3. That he has gone more than twenty miles from the place of trial, without the consent or collusion of the party offering the deposition.

## EXECUTIONS.

Supplementary proceedings on transcript filed §7949.

### OF EXECUTIONS AND PROCEEDINGS THEREON.

§9506. **Stay.** §1786.—98. The execution upon a judgment by a justice of the peace, may be stayed in the manner hereinafter provided, upon reasonable notice to the opposite party, and for the following periods of time, to be calculated from the date of the judgment:

1. If the judgment be for any sum not exceeding twenty-five dollars, exclusive of costs, one month.
2. If it be for more than twenty-five dollars, two months.

§9507. — **Bond.** §1787.—99. To entitle any person to such stay of execution, some responsible person, to be approved by the justice, and not being a party to the judgment, must, within five days after rendering of the judgment, enter into a bond, before the justice, to the adverse party, in a sufficient sum to secure the payment of the judgment and costs, conditioned to be void upon such payment, at the expiration of the stay.

§9508. — **Form.** §1788.—100. Such bond shall be signed by the person entering into the same, and may be in the following form:

Whereas A. B. has obtained a judgment before J. P., on [one] of the justices of the peace in and for — county on the — day of —, 18—, against C. D. for — dollars; now, therefore, I, E. F. acknowledge myself bound to A. B., in the sum of — dollars; this bond to be void if such judgment shall be paid at the expiration of — month after the time it was rendered.

—, E. F.

Dated the — day of —, 18—.

**§9509. Execution Against Sureties. §1789.—101.** If at the expiration of such stay, the judgment be not paid, the execution shall issue against both the principal and bail. If the principal do not satisfy the execution, and the officer cannot find sufficient property belonging to him upon which to levy, he shall levy upon the property of the bail, and in his return shall state what amount of money, collected by him on the execution, was collected from the bail, and the time when the same was received.

**§9510. Surety Substituted. §1790.—102.** After the return of such execution, the bail shall be entitled, on application to the justice, to have the judgment or so much thereof as may have been collected from him in satisfaction of the execution, transferred to his use; and he may collect the same from the defendant by execution, together with the interest at the rate of twelve per cent. per annum.

**§9511. After Stay Execution Recalled. §1791.—103.** If judgment be stayed in the manner above provided, after an execution has been issued thereon, the justice shall revoke such execution, in the same manner, and with like effect as he is hereinafter directed to revoke an execution, after an appeal has been allowed; and if the defendant have been committed, shall order him to be discharged from custody.

Revocation of execution on appeal, §9403.

**§9512. Set-off of Mutual Judgments. §1792.—104.** If there be mutual justice's judgments between the same parties, upon which the time for appealing has elapsed on judgment, on the application of either party, and reasonable notice given to the adverse party, one may be set off against the other, by the justice before whom the judgment against which the set-off is proposed, may be.

**§9513. — of Another Justice. §1793.—105.** If the judgment proposed as a set-off was rendered before another justice, the party proposing such set-off shall produce before such justice a transcript of such judgment, upon which there is a certificate of the justice before whom such may be, that it is unsatisfied in whole or in part, and that there is no appeal, and that such transcript was obtained for the purpose of being set-off against the judgment to which it is offered as a set-off. The justice granting such transcript shall make an entry thereof on his docket, and all further proceedings on such judgment shall be stayed, unless such transcript be returned with the proper justice's certificate thereon, that it has not been allowed in set-off.

**§9514. — Execution for Balance. §1794.—106.** If any justice shall set off one judgment against another, he shall make an entry thereof on his docket, and execution shall issue only for the balance which may be due after such set-off. If a justice shall allow a transcript of a judgment rendered by another justice to be set-off, he shall file such transcript among the papers relating to the judgment in which it is allowed in set-off. If he shall refuse such transcript as a set-off, he shall so certify on the transcript, and return the same to the party who offered it.

**§9515. No Execution After Five Years. §1795.—107.** Execution for the enforcement of a judgment in a justice's court, may be issued on the application of the party entitled thereto, in the manner hereinbefore prescribed; but after the lapse of five years from the date of the judgment, no execution shall issue except by leave of the justice before whom such judgment may be, upon reasonable notice, to the defendant.

**§9516. Successor of Justice May Issue Execution. §1796.—108.** When any judgment shall have been rendered by any justice of the peace, and the same not be satisfied during his continuance in office, and the docket of such justice shall have been transferred to another justice, or to the successor of the justice rendering such judgment, the justice to whom the docket shall be delivered shall issue execution upon such unsatisfied judgment in the same manner, and with like effect as if he himself had rendered the judgment.



**§9517. Transcript to Other Counties.** §1797.—109. If the defendant have not goods and chattels in the county in which judgment was rendered, sufficient to satisfy the execution, the justice before whom such judgment may be, shall, at the request of the party entitled, make out a certified transcript of the same, which may be delivered to a justice in any other county, who shall make an entry thereof in his docket, and issue execution thereon for the amount of the judgment, or such part as shall be unsatisfied, with costs as in other cases.

Judgment may be made lien on realty and execution issue from superior court, §8112.

**§9518. Requisites of Execution.** §1798.—110. The execution shall be directed (except when it is otherwise especially provided,) to the sheriff or any constable of the county where the justice resides; shall be dated on the day it is issued, and made returnable within thirty days from the date; and it shall be against the goods and chattels of the person against whom the same is issued.

**§9519. Justice's Endorsement of Execution—Constable's Endorsement.** §1799.—111. Before any execution shall be delivered, the justice shall state in his docket, and also on the back of the execution, the amount of the debt, or damages and costs, and of the fees due to each person separately, and the officer receiving such execution shall indorse thereon the time of the reception of the same.

**§9520. Alias Executions.** §1800.—112. If an execution be not satisfied, it may, at the request of the plaintiff be renewed from time to time by the justice who issues the same, or the justice to whom his docket is transferred by an indorsement thereon to that effect, signed by him and dated when the same shall be made. If any part of such execution has been satisfied the indorsement of renewal shall express the sum due on the execution. Every such indorsement shall renew the execution in full force in all respects for thirty days, and no longer; and an entry of such renewal shall be made in the docket of the justice.

**§9521. Notice of Sale.** §1801.—113. The officer, after taking goods and chattels into his custody by virtue of an execution, shall, without delay, give public notice by at least three advertisements, put up at three public places in the county, of the time and place, when and where they will be exposed for sale. Such notice shall describe the goods and chattels taken, and shall be put up at least ten days before the day of sale.

**§9522. Sale—Return.** §1802.—114. At the time and place so appointed, if the goods and chattels be present for inspection of bidders, the officer shall expose them to sale at public vendue to the highest bidder; he shall return the execution, and have the money before the justice at the time of making such return, ready to be paid over to the persons respectively entitled thereto.

**§9523. Officer Shall Not Purchase.** §1803.—115. No officer shall directly or indirectly purchase any goods or chattels at any sale made by him upon execution, and every such purchase shall be absolutely void.

**§9524. Arrest of Defendant After Return.** §1804.—116. If the action be one in which the defendant might have been arrested upon a warrant, an execution against the person of such defendant, may be issued after the return of an execution against his property unsatisfied in whole or in part. An execution against the person may likewise be issued after such return where the defendant has been arrested upon a warrant and not discharged according to law.

**§9525. Garnishment.** §1805.—117. If there be no property found, or if the goods and chattels levied on be not sufficient to satisfy such execution, the officer shall, on demand of the plaintiff, summon in writing, as garnishees, such persons as may be named to the plaintiff or his agent, to appear before the justice on the return day of the execution, to answer such interrogatories as may be put to them, touching their liabilities as garnishees, and the like proceedings shall be had thereon, before the justice to final judgment, as in the proceedings by attachment.

Later act relating to garnishment, Justice court, §9530.

**§9526. Execution Against Either Party for Costs. §1806.—118.** Any justice of the peace may issue an execution against the prevailing party, to collect fees and costs for which such party may be liable, after an execution has been first issued against the other party, and returned "no property found."

**§9527. Claim to Property by Third Party. §1807.—119.** If any property levied on be claimed by any other person than the defendant in the execution, and the claimant make affidavit of his title or right to the possession of the same, stating the ground of such title or right, and serve the same upon the sheriff or constable, while the property is in his possession, said sheriff or constable shall not be bound to keep the property unless the plaintiff on demand indemnify him in the same manner as provided in this act for cases where property held under attachment is claimed by persons not parties to the suit and when such claim is made, the sheriff or constable shall immediately file the claimant's affidavit with the justice, and notify the plaintiff thereof, and unless the property be at once released, the justice shall set the case for trial, upon the allegations of the claimant's affidavit, and the case shall proceed and be determined in the same manner, as provided in this act, for cases where property held under attachment is claimed by persons not parties to the suit.

Other provisions may be applied for redelivery, *Meakim v. Ludwig* 99 W. 180.

Claim to property levied on or attached, §7843; replevined, §9623.

Constable may demand indemnity bond—liability on bond for costs—proceeds of exe-

cution sale accruing to one judgment creditor does not affect bond executed by others—court properly directed verdict for plaintiff in action on bond, *Brotton v. Lunkley* 11 W. 581.

**§9528. — Claimant May Pursue Any Remedy. §1808.—120.** Nothing contained in the last section shall be so construed as to prevent the claimant of property levied on by execution, from resorting to any legal remedy he may choose to pursue, instead of proceeding in the manner therein prescribed.

## FORMS, CIVIL.

### FORMS IN CIVIL ACTIONS IN JUSTICES' COURTS.

**§9529. Forms in Civil Cases. §1885.—197.** The following or equivalent forms may be used by justices of the peace, in civil actions and proceedings under this chapter, to-wit:

#### FORM OF A WARRANT.

State of Washington, County of ——— ss.

To the Sheriff or any Constable of said County:

In the name of the State of Washington, you are hereby commanded to take the body of C D, if he be found in your county, and bring him forthwith before the undersigned, one of the justices of the peace in and for said county, at his office in——— to answer, A B, in a civil action; and you are hereby commanded to give due notice thereof to the said plaintiff, or his agent or attorney; and have you there and then this writ.

Given under my hand this — day of — 18—.

J. P. Justice of the Peace.

#### FORM OF SUBPOENA.

State of Washington, County of ——— ss.

To ———:

In the name of the State of Washington, you are hereby required to appear before the undersigned, one of the justices of the peace in and for said county, on the — day of —, 18—, at — o'clock in the——noon, at his office in —, to give evidence in a certain cause, then and there to be tried between A B, plaintiff, and C D, defendant, on the part of (the plaintiff or defendant as the case may be.)

Given under my hand this — day of — 18—.

J. P., Justice of the Peace.

#### FORM OF AN EXECUTION.

State of Washington County of ——— ss.



To the Sheriff or any Constable of said County:

Whereas, judgment against C D, for the sum of — dollars, and — dollars costs of suit, was recovered on the — day of —, 18—, before the undersigned, one of the justices of the peace in and for said county, at the suit of A B. These are, therefore in the name of the State of Washington, to command you to levy on the goods and chattels of the said C D (excepting such as the law exempts), and make sale thereof according to law, to the amount of said sum and costs upon this writ, and the same return to me within thirty days, to be rendered to the said A B, for his debt interests and costs.

Given under my hand this — day of — A. D. 18....

J. P. Justice of the Peace.

### FORM OF VENIRE FOR A JURY.

State of Washington — County—ss.

To the Sheriff and Constable of said County:

In the name of the State of Washington you are hereby commanded to summon six good and lawful men of your county, to be and appear before the undersigned, one of the justices of the peace in and for said county, on the — day of —, 18—, at — o'clock in the — noon of said day, at his office in —, to make a jury for the trial of a civil action, between A B [plaintiff] and C D, defendant, and have you then and there this writ.

Given under my hand this — day of —, 18—.

J. P., Justice of the Peace.

### FORM OF EXECUTION AGAINST THE BODY.

State of Washington — County—ss.

To the Sheriff or any Constable of said County:

Whereas judgment against C D, for the sum of — dollars and for — dollars, costs of suit, was recovered on the — day of —, 18—, before the undersigned, one of the justices of the peace in and for said county, at the suit of A B, and an execution against his property returned unsatisfied; these are, therefor[e], in the name of the State of Washington to command you to take the body of the said C D, and him convey and deliver to the keeper of the jail of said county, who is hereby commanded to receive and keep the said C D, in safe custody in prison, until the aforesaid sum, and all legal expenses, be paid and satisfied, or until he be discharged therefrom by due course of law; and of this writ make due return within thirty days.

Given under my hand this — day of — 18—.

J. P., Justice of the Peace.

### FORM OF EXECUTION AGAINST PRINCIPAL AND SURETY, AFTER EXPIRATION TO STAY OF EXECUTION.

State of Washington County of — —ss.

To the Sheriff or any Constable of said County:

Whereas judgment against C D for the sum of — dollars, and for — dollars, costs of suit, was recovered on the — day of —, 18—, before the undersigned, one of the justices of the peace in and for said county, at the suit of A B; and whereas, on the — day of —, 18—, E F became surety to pay said judgment and costs, in — month from the date of the judgment aforesaid, agreeably to law, in the payment of which the said C D and E F have failed; these are therefore, in the name etc., (as in the common form.)

### FORM OF ORDER IN REPLEVIN.

State of Washington County of — —ss.

To the Sheriff or any Constable of said County:

In the name of the State of Washington, you are hereby command[ed] to take the personal property mentioned and described in the within affidavit, and deliver the same to the plaintiff, upon receiving a proper undertaking unless before such delivery; the defendant enter into a sufficient undertaking for the delivery thereof to the plaintiff if the delivery be adjudged.

Given under my hand this — day of — 18—.

J. P., Justice of the Peace.

## FORM OF A WRIT OF ATTACHMENT.

State of Washington. County of ——— ss.

To the Sheriff or any Constable of said County:

In the name of the State of Washington, you are commanded to attach, and safely keep the goods and chattels moneys effects and credits of C D, (excepting such as the law exempts) or so much as shall satisfy the sum [of] ——— dollars, with interets and cost of suit, in whosoever hands or possession the same may be found in your county, and to provide that the goods and chattels so attached may be subject to further proceeding, thereon, as the law requires; and of this writ make legal service and due return.

Given under my hand this ——— day of ——— 18—.

J. P. Justice of the Peace.

## FORM OF UNDERTAKING FOR ARREST.

Whereas, an application has been made by A B, plaintiff, to J P, one of the justices of the peace in and for ——— county, for a warrant to arrest C D, defendant, founded upon an affidavit of the said plaintiff, setting forth that C D, (here state the cause for the arrest); Now, therefore, we A B, plaintiff, and E F, acknowledge ourselves bound to C D, in the sum of ——— dollars, to pay all costs that may be awarded to the said defendant, and all damages which he may sustain by reason of the arrest, not exceeding the sum of ——— dollars.

Dated this ——— day of ———, 18—.

A B, E F.

## FORM OF UNDERTAKIING IN REPLEVIN.

Whereas A B, plaintiff, has commenced an action before J P, one of the justices of the peace in and for ——— county, against C D, defendant, for the recovery of certain personal property, mentioned, and described in the affidavit of the plaintiff to-wit: (Here set forth the property claimed.) Now, therefore, we, A B plaintiff, E F and G H, acknowledge ourselves bound unto C D in the sum of ——— dollars for the prosecution of the action for the return of the property to the defendant, if return thereof be adjudged, and for the payment to him of such sum as may, for any cause be recovered against the plaintiff.

Dated the ——— day of ——— 18—.

A B, E F, G H.

## FORM OF UNDERTAKING IN ATTACHMENT.

Whereas, an application has been made by A B, plaintiff, to J P, one of the justices of the peace in and for ——— county for a writ of attachment against the personal property of C D, defendant; Now, therefore, we, A B, plaintiff, and E F acknowledge ourselves bound to C D in the sum of ——— dollars, that if the defendant recover judgment in this action, the plaintiff will pay all costs that may be awarded to the defendant, and all damages which he may sustain by reason of the said attachment, and not exceeding the sum of ——— dollars.

Dated the ——— day of ——— 18—.

A B, E F.

## FORM OF UNDERTAKING TO DISCHARGE ATTACHMENT.

Whereas, a writ of attachment has been issued by J P, one of the justices of the peace in and for ——— county, against the personal property of C D, defendant, in an action in which A B is plaintiff; Now therefore, we, C D, defendant E F, and G H, acknowledge ourselves bound unto J K, constable, in the sum of ——— dollars, (double the value of the property) engaging to deliver the property attached, to-wit: (Here set forth a list of articles attached) or pay the value thereof to the the sheriff or constable, to whom the execution upon a judgment obtained by plaintiff in the aforesaid action may, be issued.

Dated this ——— day of ——— 18—.

C D, E F, G H.

## FORM OF UNDERTAKING TO INDEMNIFY CONSTABLE ON CLAIM OF PROPERTY BY A THIRD PERSON.

Whereas L M, claims to be owner of, and have the right to possession of certain personal property, to-wit: (Here describe it) which has been taken by J K, constable in ——— county, upon an execution by J P, justice of the



peace in and for the county of —, upon a judgment obtained by A B, plaintiff against C D, defendant; Now, therefore, we, A B, plaintiff, E F, and G H, acknowledge ourselves bound unto the said J K, constable in the sum of — dollars, to indemnify the said J K against such claim.

A B, E F.

## GARNISHMENT.

**AN ACT in relation to garnishments in justice courts in the State of Washington.** Approved March 17, 1909. Laws '09 p 607.

**§9530. Garnishment, Cause of.** §1. The justices of the peace in the various precincts in this state may issue writs of garnishment, returnable to their respective courts, where the plaintiff sues for a debt which is just, due and unpaid; or where the plaintiff has a judgment wholly or partially unsatisfied in the court from which he seeks to have the writ of garnishment issued. L '11 637.

Public corporations subject to writ §8026.

**§9531. Affidavit.** §2. Before the issuance of the writ of garnishment, the plaintiff, or someone in his behalf, shall make application therefor by affidavit, stating the facts authorizing the issuance of the writ, and that he has reason to believe and does believe that the garnishee is indebted to the defendant or that he has in his possession or under his control personal property or effects belonging to the defendant, or that the garnishee is a corporation and that the defendant is the owner of shares of the capital stock thereof, and that the garnishment applied for is not sued out to injure either the defendant or the garnishee. L '11 637.

**§9532. Appearance—Answer—Time of Service.** §3. When the foregoing requisites have been complied with, the justice of the peace shall, without additional fee, docket the case in the name of the plaintiff, as plaintiff, and of the garnishee as defendant and shall immediately issue a writ of garnishment directed to the garnishee commanding him to appear before the justice who issues the writ, at a certain place, day and hour, which shall not be less than six nor more than twenty days from the date of the issuance of the writ, to answer on oath in what amount, if any, he was indebted to the defendant when such writ was served upon him, and what personal property or effects if any, of the defendant he had in his possession or under his control when such writ was served upon him; and where it appears from the affidavit for the writ that the garnishee is a corporation in which the defendant is the owner of shares, the writ of garnishment shall further require the garnishee to answer what number of shares, if any, the defendant owned in such corporation when such writ was served upon it. The writ of garnishment shall be served at least five days before the time for answer mentioned therein. L '11 637.

**§9533. Form of Writ.** §4. Said writ shall be substantially in the following form:

The State of Washington, To..... Greeting:

Whereas, in the justice court in and for.....precinct,  
.....county, State of Washington, before .....  
Justice of the Peace, in a certain cause wherein ..... is plaintiff  
and ..... is defendant, the plaintiff claiming an indebtedness  
(or having a judgment, as the case may be) against the said .....  
of ..... dollars, besides interest and costs of suit, has applied for  
a writ of garnishment against you:

Now, therefore, you are hereby commanded to be and appear before the said justice at his office ..... in said county, on the ..... day  
of ....., 19....., at ..... o'clock in the .....noon of said  
day, then and there to answer upon oath in what amount, if any, you were  
indebted to the said ..... when this writ was served upon you,  
and what personal property or effects, if any, of the said ..... you

had in your possession or under your control when this writ was served upon you (and if the garnishee be a corporation in which the defendant is alleged to be the owner of shares, then the writ shall proceed: And further to answer what number of shares, if any, the said ..... owned in ....., a corporation, when this writ was served upon you).

Dated this ..... day of ....., 19.....

Justice of the Peace. L '11 637.

**§9534. Writ, Signature Endorsements and Delivery.** §5. The writ of garnishment shall be dated and signed by the justice of the peace, and the name and office address of the attorney for the plaintiff shall be endorsed thereon, or in case the plaintiff has no attorney, then the name and address of the plaintiff shall be endorsed thereon. The writ, when so issued and endorsed, shall be delivered by the justice of the peace who issues it to the party applying therefor, or to his attorney.

**§9535. Service.** §6. The writ of garnishment may be served by the sheriff or any constable of the county in which the garnishee lives, or it may be served by any citizen of the State of Washington over the age of twenty-one years and not a party to the action in which it is issued in the same manner as a summons in an action is served. And in case such writ is served by an officer, such officer shall make his return thereon, showing the time, place and manner of service and noting thereon his fees for making such service and shall sign his name to such return. In case such service is made by any person other than an officer, such person shall attach to the original writ his affidavit showing his qualifications to make such service and the time, place and manner of making service, but no fee shall be allowed for the service of such writ unless the same is served by an officer.

Service good on any agent of foreign corporation, Barrett Mfg. Co. v. Kennedy, v. Co-Operative Colony 1 W. 57.

73 W.

Action dismissed for wrong venue, Knott v. Co-Operative Colony 1 W. 57. Objection will avail defendant after trial on merits, id.

**§9536. Data to Bank when Garnishee.** §7. In cases where the writ of garnishment issued under the provisions of this act is directed to corporation carrying on a general banking business in the State of Washington, the plaintiff, in addition to serving the writ of garnishment upon said garnishee, shall at the same time and as a part of said service deliver to said garnishee a statement in writing signed by the plaintiff or his attorney, stating the place of residence of the defendant and his business, occupation, trade or profession, and unless such statement is so delivered with said writ of garnishment, the service of said writ shall not be deemed complete and the garnishee shall not be held liable thereon.

**§9537. What is Held.** §8. From and after the service of such writ of garnishment, it shall not be lawful for the garnishee to pay to the defendant any debt owing to him at the time of such service, or to deliver to him any personal property or effects belonging to the defendant in his possession or under his control at the time of such service, nor shall the garnishee, if it be a corporation in which the defendant is alleged to be the owner of shares, permit or recognize any sale or transfer of any shares owned by said defendant at the time of such service; and any such payment, delivery, sale or transfer shall be void and of no effect as to so much of said debt, personal property or effects or shares as may be necessary to satisfy the plaintiff's demand.

**§9538. Bond of Defendant.** §9. If the defendant in the principal action causes a bond to be executed to the plaintiff, with sureties, to be approved by the justice of the peace issuing the writ, conditioned that he will pay any judgment that may be rendered against him in favor of the plaintiff in said action, and shall file said bond with said justice of the peace, the writ of garnishment shall, upon the filing and approval of said bond, be immediately discharged, and all proceedings had thereunder shall be vacated and said justice shall issue and deliver to said defendant a certificate to the effect that said writ of garnishment has been discharged, and upon the delivery of



said certificate to the garnishee he shall be discharged of any further liability under said writ, Provided That the garnishee shall not be thereby deprived from recovery of costs in said proceeding to which he would otherwise be entitled under this act.

**§9539. Form of Answer.** §10. The answer of the garnishee shall be in writing and signed and verified as other pleadings and shall make true answers to the several matters inquired of in the writ of garnishment and shall be served upon the plaintiff or his attorney and filed with the justice of the peace who issued said writ.

**§9540. Garnishee Discharged, When.** §11. Should it appear from the answer of the garnishee that he was not indebted to the defendant when the writ of garnishment was served upon him and that he had not in his possession or under his control any personal property or effects of the defendant when the writ was served; and when the garnishee is a corporation in which the defendant is alleged to be the owner of shares of stock, if it shall further appear from such answer that the defendant was not the owner of any such shares when the writ was served, and should the answer of the garnishee not be controverted as hereinafter provided, the court shall enter judgment discharging the garnishee.

**§9541. Default of Garnishee.** §12. Should the garnishee fail to answer the writ by the time prescribed therein, the court shall, upon application of the plaintiff therefor, declare and enter the default of the garnishee and shall thereafter render judgment as follows:

In case the plaintiff has a judgment against the defendant, judgment shall be rendered against the garnishee for the full amount of such judgment with all accruing interest and costs. In case judgment has not been rendered in the principal action at the time when the default of the garnishee is declared and entered, final judgment shall not be rendered against the garnishee until the final judgment in the principal action is entered; and if the plaintiff recovers judgment against the defendant, the court shall enter judgment against the garnishee for the full amount of the judgment awarded to the plaintiff against the defendant; but if the plaintiff fails to recover judgment against the defendant, the garnishee shall be discharged without costs. L'11 637.

**§9542. Judgment Against Garnishee.** §13. Should it appear from the answer of the garnishee, or should it be otherwise made to appear as hereinafter provided, that the garnishee was indebted to the defendant in any amount when the writ of garnishment was served upon him, the court shall render judgment for the plaintiff against such garnishee for the amount so admitted or found to be due from the garnishee, less the amount of the costs awarded to the garnishee, unless the amount so admitted or found to be due shall exceed the amount of the judgment rendered or thereafter rendered in favor of the plaintiff against the defendant, with interest and costs, in which case it shall be for the amount of such judgment rendered or thereafter to be rendered, with interest and costs; Provided, however, That judgment shall not be rendered against the garnishee until the final judgment in the principal action is entered, and if the plaintiff fails to recover judgment against the defendant the garnishee shall be discharged and shall have and recover his costs against plaintiff: Provided, however, If it shall appear from the answer of the garnishee and the same is not controverted, or if it shall appear from the trial hereinafter provided for that the garnishee was indebted to the defendant in any sum at the time of the service of said writ, but that said indebtedness is not matured and is not due and payable, the court shall make an order requiring the garnishee to pay such sum into court when the same becomes due, less the amount of the costs awarded to the garnishee, the date when such payment is to be made to be specified in said order, and in default thereof that judgment shall be entered against the garnishee for the amount of such indebtedness so admitted or found to be due. In case the garnishee shall pay said sum at the time specified in said order, said payment shall operate as a discharge; otherwise judgment shall

be entered against him as above provided. Provided further, That if judgment shall be rendered in favor of the principal defendant, or if any judgment rendered against him shall be satisfied prior to the date of payment specified in said order, the garnishee shall not be required to make the payment hereinbefore provided for, nor shall any judgment in such case be against him.

**§9543. Execution.** §14. Execution may be issued on the judgment against the garnishee herein provided for in like manner as upon any other judgment. The amount made upon any such execution shall be paid by the officer executing the same to the justice of the peace from whom such execution was issued, and shall be applied to the satisfaction of such judgment, interest and costs, and also to the satisfaction of the judgment against the defendant, and the surplus, if any, shall be paid to the garnishee.

**§9544. Garnishee Shall Surrender Property.** §15. Should it appear from the answer of the garnishee, or should it be made otherwise to appear, as hereinafter provided, that the garnishee had in his possession or under his control when the writ was served upon him, any personal property or effects of the defendant liable to execution, the court shall render a decree requiring the garnishee to deliver up to the justice on demand, such personal property or effects, or so much of them as may be necessary to satisfy the plaintiff's claim. In cases where a judgment has been rendered in the principal action, such personal property or effects may be sold in like manner as other property is sold upon execution on a judgment. In cases where judgment has not been rendered in the principal action, the justice of the peace shall retain such personal property or effects in his possession until the rendition of the judgment therein, and in case judgment is entered in such principal action in favor of the plaintiff, said goods or effects, or sufficient of them to satisfy said judgment, may be sold in like manner as other property is sold upon an execution issued on a judgment. In case judgment shall be rendered in such action against the plaintiff and in favor of the defendant, such effects and personal property shall be by the justice returned to the defendant.

**§9545. Garnishee in Contempt.** §16. Should the garnishee adjudged to have effects or personal property of the defendant in his possession or under his control, as provided in the preceding section, fail or refuse to deliver them to the justice on such demand, the garnishee shall, on motion of the plaintiff, be cited to show cause why he should not be attached for contempt of court for such failure or refusal, and should the garnishee fail to show some good and sufficient excuse for such failure and refusal he shall be fined for such contempt and imprisoned until he shall deliver such personal property or effects.

**§9546. Sale of Shares of Stock.** §17. Where the garnishee is a corporation and it appears by the answer or otherwise that the defendant was, when the writ of garnishment was served upon it, the owner of any shares of stock in such corporation, the court shall render a decree ordering the sale under execution in favor of the plaintiff against the defendant of such shares of the defendant in such corporation, or so much thereof as may be necessary to satisfy such execution.

**§9547. — How Conducted.** §18. The sale so ordered shall be conducted in all respects as other sales of personal property under execution, and the officer making such sale shall execute a transfer of such shares to the purchaser with a brief recital of the judgment of the court under which the same was sold.

**§9548. — What Title Passes.** §19. Such sale shall be valid and effectual to pass to the purchaser all the right, title and interest which the defendant had in such shares of stock, and the proper officers of such company shall enter such sale and transfer on the books of the company in the same manner as if the sale had been made by the defendant himself.

**§9549. Answer Controverted.** §20. If the plaintiff should not be satisfied with the answer of the garnishee, he shall state such fact to the justice



of the peace, who shall thereupon enter the fact in his docket, and an issue shall be formed under the direction of the court and tried as other cases; Provided, however, No pleading shall be necessary on such issue other than the affidavit of the plaintiff, the answer of the garnishee and the statement of the plaintiff that he is not satisfied with the answer.

**§9550. — Attorney's Fee.** §21. Where the answer in controverted and the garnishee is subsequently discharged upon the trial thereof, his costs, including a reasonable attorney's fee to be fixed by the court, shall be taxed against the plaintiff; and if the garnishee upon his answer being controverted by the plaintiff is held liable to an extent greater than the liability admitted in his answer, the costs of the plaintiff upon such proceeding, including a reasonable attorney's fee to be fixed by the court, shall be taxed against the garnishee.

**§9551. Defense Against Defendant.** §22. It shall be a sufficient answer against any claim of the defendant against the garnishee founded on any indebtedness of such garnishee or upon the possession by him of any personal property or effects, or, where the garnishee is a corporation in which the defendant was the owner of shares of stock, for the garnishee to show that such indebtedness was paid or such effects delivered, or such shares of stock were sold under judgment of the court in accordance with the provisions of this act.

**§9552. Identity of Persons.** §23. Where the garnishee in his answer states that he was indebted or had personal property or effects in his possession or under his control at the time of the service of the writ of garnishment upon him to a person of the same or similar name to the defendant, and stating the place of business or residence of said person, and that he does not know whether or not such person is the same person as the defendant, and prays the court to determine whether or not the person to whom he was indebted or whose personal property or effects he had in his possession is the same person as the defendant, the court, before rendering judgment against the garnishee defendant as hereinbefore provided, shall take proof as to the identity of said persons, and if he should find therefrom that they are not one and the same individual, the garnishee shall be discharged and shall have and recover his costs against the plaintiff; and should find that the said persons are one and the same individuals, he shall make a similar judgment as to the payment of the money or the delivery of personal property and effects and as to costs of the garnishee as is hereinbefore provided, where the garnishee is held upon his answer. Before any such hearing on the question of identity is had, the plaintiff shall cause the justice of the peace to issue a citation directed to the person to whom the garnishee answers he was indebted or whose personal property or effects the garnishee has answered he had in his possession or under his control, commanding him to appear before the justice of the peace from which it is issued within ten days after the service of the same upon him, and to answer on oath whether or not he is the same person as the defendant in said action. Said citation shall be dated and attested in like manner as a writ of garnishment and be delivered to the plaintiff or his attorney and shall be served in the same manner as a summons in an action is served. If upon the hearing in this section provided for, the court shall find that the defendant or judgment debtor is the same person as the person to whom the garnishee defendant was indebted, or whose personal property or effects said garnishee defendant had in his possession or under his control, it shall be sufficient answer to any claim of said person against the garnishee founded on any indebtedness of such garnishee or on the possession by him of any personal property or effects for the garnishee to show that such indebtedness was paid or such personal property or effects delivered under the judgment of the court in accordance with the provisions in this act.

**§9553. Defendant's Exemptions.** §24. It shall not be necessary for the garnishee to plead or set forth in his answer any defense which the defendant might have to the cause of action against him, nor to plead or set forth

in his answer any claim of exemption which may be available to the defendant, but this section shall not be construed to preclude the defendant from pleading, claiming or asserting any exemption which may be available to him under the laws of the State of Washington now in force or hereinafter to be enacted.

## JUDGMENT.

Lien by filing transcript §8112.

### OF JUDGMENT.

**§9554. Judgment of Non-Suit. §1780.—92.** Judgment that the action be dismissed, without prejudice to a new action, may be entered, with costs, in the following cases:

1. When the plaintiff voluntarily dismisses the action before it is finally submitted.
2. When he fails to appear at the time specified in the notice, upon continuance, or within one hour thereafter.
3. When it is objected at the trial, and appears by the evidence that the action is brought in the wrong county; but if the objection be taken and overruled, it shall be cause only of reversal or appeal; if not taken at the trial it shall be deemed waived, and shall not be cause of reversal.

**§9555. By Default. §1781.** When the defendant fails to appear and plead at the time specified in the notice, or within one hour thereafter, judgment shall be given as follows:

1. When the defendant has been served with a true copy of the complaint, judgment shall be given without further evidence for the sum specified therein;

2. In other cases, the justice shall hear the evidence of the plaintiff, and render judgment for such sum only as shall appear by the evidence to be just, but in no case exceed the amount specified in the complaint.

3. The justice shall have full power at any time after a judgment has been given by default for failure of the defendant to appear and plead at the proper time, to vacate and set aside said judgment for any good cause and upon such terms as he shall deem sufficient and proper. Such judgment shall only be set aside upon five days notice in writing served upon the plaintiff or the plaintiff's attorney and filed with the justice within ten days after the entry of the judgment. The justice shall hear the application to set aside such judgment either upon affidavits or oral testimony as he may deem proper. In case such judgment is set aside the making of the application for setting the same aside shall be considered an entry of general appearance in the case by the applicant, and the case shall duly proceed to a trial upon the merits: Provided, That, no justice of the peace shall pay out or turn over money or property received by him by virtue of any default judgment until the expiration of the ten days for moving to set aside such default judgment has expired. L. '15 141, R.&B. §1858.

No appeal lies from default judgment, *State ex rel. Pacific Coast Co. v. Superior Court* 12 W. 548.

**§9556. Trial by the Court. §1782.—94.** Upon issue joined, if a jury trial be not demanded, the justice shall hear the evidence, and decide all questions of law and fact, and render judgment accordingly.

**§9557. Judgment on Verdict. §1783.—95.** Upon the verdict of a jury, the justice shall immediately render judgment thereon. When the trial is by the justice, judgment shall be entered immediately after the close of the trial, if the defendant has been arrested and is still in custody; in other cases it shall be entered within three days after the close of the trial.

Judgment announced but not entered for ten days good, *Mundy v. Kern* 74 W. 477.



## JURISDICTION.

Animals doing damage §1983; hogs at large §2018.

## JURISDICTION OF JUSTICES OF THE PEACE.

§9558. **Territory of Jurisdiction.** §1706.—18. The jurisdiction of all justices of the peace shall be co-extensive with the limits of the county in which they are elected and no other or greater unless otherwise expressly provided by statute.

Substitute—**AN ACT** fixing the venue of actions in justice courts. Approved March 7, 1899. Laws '99 p 53.

**Territory of jurisdiction—residence of justice** §9458.

§9559. **Venue.** §1. All civil actions commenced in a justice court against a defendant or defendants residing in a city or town of more than three thousand inhabitants shall be brought in the justice court of the precinct in said city or town in which one or more of such defendants reside.

Prior to amendment held to apply only to civil actions, *State ex rel. Calderwood v. Schomber* 23 W. 573.

§9560. **Jurisdiction as Heretofore.** §2. The jurisdiction of justices of the peace in all civil actions, except as provided in the preceding section, shall be co-extensive with the limits of the county in which they are elected or appointed, and no other or greater, but every justice of the peace shall continue to reside and perform all the duties of his office in the precinct for which he was elected or appointed during his continuance in office. L. '01 105.

**Jurisdiction, prior act** §9458.

§9561. **Office—Process.** §1707.—19. Every justice of the peace shall keep his office in the precinct for which he may be elected, and not elsewhere: but he may issue process in any place in his county.

§9562. **Office With Law Partner.** §1708.—20. No justice of the peace shall hold his office in the same room with a practicing attorney, unless such attorney shall be his law partner: and in that case such partner shall not be permitted to appear or practice as an attorney, in any case tried before such justice of the peace.

§9563. **Power of Court.** §1709.—21. Every justice of the peace elected in any precinct in this state, is hereby authorized to hold a court for the trial of all actions in the next section enumerated, to hear, try and determine the same according to law; and for that purpose where no special provision is otherwise made by law, such court shall be vested with all the necessary powers which are possessed by courts of record in this state; and all laws of a general nature shall apply to such justice's court, as far as the same may be applicable, and not inconsistent with the provisions of this chapter.

Justices may restore lost records, *State appearance with objection to jurisdiction ex rel. Brockway v. Whitehead* 88 W. 549. because complaint does not allege prop-

Jurisdiction cannot be conferred by conveyance in the county, *Woodbury v. Henning-*  
sent as submitting to trial after special session 11 W. 12.

§9564. **Civil Jurisdiction.** §1710. Every justice of the peace shall have jurisdiction and cognizance of the following civil actions and proceedings:

1. Of an action arising on contract for the recovery of money only in which the sum claimed is less than one hundred dollars.

2. Of an action for damages for injuries to the person, or for taking or detaining personal property, or for injuring personal property, or for an injury to real property when no issue raised by the answer involves the plaintiff's title to or possession of the same, when the amount of damages claimed is less than one hundred dollars; also of actions to recover the possession of personal property, when the value of such property as alleged in the complaint is less than one hundred dollars.

3. Of an action for a penalty less than one hundred dollars.

4. Of an action upon a bond conditioned for the payment of money,

when the amount claimed is less than one hundred dollars, though the penalty of the bond exceed that sum, the judgment to be given for the sum actually due, not exceeding the amount claimed in the complaint.

5. Of an action on an undertaking or surety bond taken by him or his predecessor in office when the amount claimed is less than one hundred dollars.

6. Of an action for damages for fraud in the sale, purchase or exchange of personal property, when the damages claimed are less than one hundred dollars.

7. To take and enter judgment on confession of a defendant, when the amount of the judgment confessed is less than one hundred dollars.

8. To issue writs of attachment upon goods chattels moneys and effects, when the amount is less than one hundred dollars.

9. Of all other actions and proceedings of which jurisdiction is specially conferred by statute, when the amount involved is less than one hundred dollars, and the title to or right of possession of or to a lien upon real property is not involved. L. '91 137.

Criminal jurisdiction, §9433.

94 W. 680.

Jurisdiction of cases of damage by swine, §2017.

Amount claimed and not amount recovered is test of jurisdiction, Ebey v. Engle

Jurisdiction in lost and unclaimed property, §3655.

1 W. T. 72.

Jurisdictional amount cannot be amended in superior court to appeal to supreme court, Bertles v. Hawkins Motor Car Co.

Want of jurisdiction of person of defendant not waived by proceeding to trial after special appearance to object to jurisdiction overruled, Woodbury v. Henningsen 11 W. 12.

**§9565. Jurisdiction Prohibited. §1711.—23.** The jurisdiction conferred by the last section, shall not however extend to the following civil actions:

1. In which the title to real property shall come in question.
2. Nor to an action for the foreclosure of a mortgage or enforcement of a lien on real estate.
3. Nor to an action for false imprisonment, libel, slander, malicious prosecution, criminal conversation or seduction.
4. Nor to any action against an executor or administrator as such.

On trial if question of title to land arises, procedure, §9566.

## LAND CASES.

### TITLE TO LAND.

**§9566. Land Cases to Be Certified Up. §1868.—180.** If it appear on the trial of any cause before a justice of the peace, from the evidence of either party, that the title to lands is in question, which title shall be disputed by the other, the justice shall immediately make an entry thereof in his docket, and cease all further proceedings in the cause, and shall certify and return to the superior court of the county, a transcript of all the entries made in his docket, relating to the cause, together with all the process and other papers relating to the action, in the same manner, and within the same time, as upon an appeal; and thereupon the parties shall file their pleadings, and the superior court shall proceed in the cause to final judgment and execution, in the same manner as if the said action had been originally commenced therein, and the cost shall abide the event of the suit.

## PEACE RECOGNIZANCES.

### MISCELLANEOUS PROVISIONS—PROCEEDINGS TO PREVENT THE COMMISSION OF CRIMES.

**§9567. Peace Bonds. §1903.—215.** Justices of the peace shall have power to cause all laws made for the preservation of the public peace to be kept; and in the execution of that power, may require persons to give security to keep the peace, or for their good behavior, or both, in the manner herein provided.

Person convicted required to give peace bond §9313.



§68. **Complaint.** §1904.—216. Whenever complaint shall be made to any such magistrate, that any person has threatened to commit an offense against the property or person of another the magistrate shall examine the complaint, and any witness who may be produced on oath, and reduce such complaints to writing and the same shall be subscribed by complainant.

§9569. **Hearing—Appeal—Transcript.** §1905. It shall be the duty of every magistrate examining a person charged with an offense, or with an intention to commit an offense, to examine all the witnesses he shall deem material, and reduce their testimony to writing, a copy of which, whether the accused is discharged, committed, or held to bail, or shall take an appeal, he shall transmit to the clerk of the court having jurisdiction of the offense. L. '91 18.

In all criminal cases evidence shall be taken, §9439. If crime has been committed proceed as in trials, §9437; or as committing magistrate, §9597.

§9570. **Warrant.** §1905.—218. If, upon the examination, it shall appear that there is just cause to fear that such offense may be committed the magistrate shall issue a warrant under his hand, reciting the substance of the complaint, and requiring the officer to whom it may be directed, forthwith to apprehend the person complained of, and bring him before such magistrate or some other magistrate, or court having jurisdiction of the cause.

§9571. **Hearing on the Case—Recognizance.** §1907.—219. The magistrate before whom any person is brought upon charge of having made threats as aforesaid shall, as soon as may be, hear and examine the complaint. And if it shall appear that there is just cause to fear that any such offense will be committed by the party complained of, he shall be required to enter into recognizance with sufficient sureties, in such sum as the magistrate shall direct, towards all the people of the state, and especially towards the person requiring such security, for such term as the magistrate shall order, not exceeding one year, but he shall not be ordered to recognize for his appearance at the superior court, unless he is charged with some offense for which he ought to be held to answer at said court.

§9572. **Commitment in Default of Bond.** §1908.—220. If the person so ordered to recognize, shall fail to enter into such recognizance, the magistrate shall commit him to the county jail during the period for which he was required to give security, or until he shall so recognize, stating in the warrant the cause of commitment, with the sum and time for which security was required.

§9573. **When Complainant Liable for Costs.** §1909.—221. If, upon examination, it shall not appear that there is just cause to fear that any such offense will be committed by the party complained of, he shall be forthwith discharged; and if the magistrate shall deem the complaint unfounded, frivolous or malicious, he may order the complainant to pay the costs of prosecution, who shall thereupon be answerable to the magistrate and the officer for their fees, as for his own debt.

§9574. **Costs.** §1910.—222. When no order respecting the costs is made by the magistrate they shall be allowed and paid in the same manner as costs before justices in criminal prosecutions; but in all cases where a person is required to give good security for the peace, or for his good behavior, the magistrate may further order that the costs of prosecution, or any part thereof, shall be paid by such person, who shall stand committed until such costs are paid, or he is otherwise legally discharged.

Costs are lien on real property, *Clallam County v. Hall* 23 W. 85.

§9575. **Appeals.** §9. An appeal may be taken from the order of a magistrate requiring a person to give security to keep the peace, or for good behavior. Such appeal shall be taken in the same manner and subject to the same conditions as appeals from justices' courts in criminal actions, and the magistrate may require recognizances of the appellant and the witness as in appeals in such criminal actions. L. '91 66.

Appeals in criminal actions, §9444.

**§9576. Judgment on Appeal.** §1913.—225. The court before which such appeal is prosecuted, may affirm the order of the justice or discharge the appellant, or may require the appellant to enter into a new recognizance, with sufficient sureties, in such sum and for such time as the court shall think proper, and may also make such order in relation to the costs of prosecution as may be deemed just and reasonable.

**§9577. Failure to Prosecute Appeal.** §1914. If any party appealing from such order of a magistrate shall fail to prosecute his appeal, his recognizance shall remain in full force and effect, as to any breach of the condition, without an affirmance of the judgment or order of the magistrate, and also shall stand as security for costs which shall be ordered by the court appealed to to be paid by the appellant.

**§9578. Discharge at Any Time Bond Given.** §1915.—227. Any person committed for not finding sureties or refusing to recognize as required by the magistrate, may be discharged by any judge or justice of the peace, on giving such security as was required.

**§9579. Bonds to Be Certified to Superior Court.** §1916. Every recognizance taken pursuant to the foregoing provisions shall be transmitted by the magistrate to the superior court for the county within ten days, and shall be there filed of record by the clerk. L. '91 18.

Commitments must be certified in ten days, §9610.

**§9580. Breaches of the Peace in Presence of Magistrate.** §1917. Every person who shall, in the presence of any magistrate, or before any judge of a court of record, make an affray, or threaten to kill or beat another, or to commit any violence or outrage against his person or property, and every person who, in the presence of such judge or magistrate, shall contend with hot and angry words to the disturbance of the peace, may be ordered, without process or other proof, to recognize for keeping the peace or being of good behavior for a term not exceeding three months, and in case of refusal, may be committed as before directed.

Procedure if offense is committed in presence of justice, §9435.

**§9581. Remission of Penalty of Bond.** §1918.—230. Whenever upon a suit brought on any such recognizance, the penalty thereof shall be adjudged forfeited, the court may remit such portion of the penalty on the petition of any defendant, as the circumstances of the case shall render just and reasonable.

**§9582. Surety May Surrender Principal.** §1919.—231. Any surety in recognizance to keep the peace, or for good behavior, or both, shall have the same authority and right to take and surrender his principal as if he had been bail for him in a civil cause, and upon such surrender, shall be discharged and exempt from liability for any act of the principal—subsequent to such surrender, which would be a breach of the condition of the recognizance, and the person so surrendered may recognize anew, with sufficient sureties, before any justice of the peace, for the residue of the term, and thereupon shall be discharged.

Surrender of principals by sureties, §7361.

**§9583. Number.** §1920.—232. Any word used in this act in the singular or plural number shall, whenever it is necessary to give effect and force to the same, according to the true intent thereof, be taken and construed to mean either.

## PLEADINGS.

### PLEADINGS AND ADJOURNMENTS.

**§9584. Time of Pleading.** §1756.—68. The pleadings in justice's court shall take place upon the appearance of the parties, unless they shall have been previously filed, or unless the justice shall, for good cause shown, allow a longer time than the time of appearance.

One hour for appearance §9419.



**§9585. Pleadings. §1757.—69.** The pleadings in the justice's court shall be:

1. The complaint of the plaintiff, which shall state in a plain and direct manner the facts constituting the cause of action.

2. The answer of the defendant, which may contain a denial of the complaint, or any part thereof; and also a statement, in a plain and direct manner, of any facts constituting a defense.

3. When the answer sets up a set-off by way of defense, the reply of the plaintiff.

New matter in answer except set-off is presumed denied, *Bellingham Bay & B. C. Ry. v. Strand* 1 W. 133.

**§9586. What Pleadings to Be in Writing. §1758.—70.** The pleadings shall be in writing, when the action is for one of the following causes:

1. For a forcible or unlawful entry upon, or a forcible or unlawful detention of lands, tenements or other possessions.

2. To recover the occupancy or possession of a mining claim. In all other cases the pleadings may be oral or in writing.

Superior court has jurisdiction of forcible entry and detainer, Const., art. 4 §6.

**§9587. Oral Pleadings—No Form. §1759.—71.** When the pleadings are oral the substance of them shall be entered by the justice in his docket. When in writing they shall be filed in his office and a reference made to them in his docket. Pleadings shall not be required to be in any particular form, but shall be such as to enable a person of common understanding to know what is intended.

**§9588. Pleading on Information and Belief. §1760.—72.** A statement in an answer or reply, that the party has not sufficient knowledge or information, in respect to a particular allegation in the previous pleadings of the adverse party to form a belief, shall be deemed equivalent to a denial.

**§9589. Pleadings for Money Only—Exhibits. §1761.—73.** When the cause of action, or set-off, arises upon an account or instrument for the payment of money only, it shall be sufficient for the party to deliver the account or instrument, or a copy thereof, to the court, and to state that there is due to him thereon, from the adverse party, a specified sum which he claims to recover or set-off. The court may, at the time of pleading, require that the original account, or instrument, be exhibited to the inspection of the adverse party, with liberty to copy the same; or if not so exhibited, may prohibit its being given in evidence.

**§9590. Verification of Pleadings. §1762.—74.** Every complaint, answer or reply, shall be verified by the oath of the party pleading; or if he be not present, by the oath of his attorney or agent, to the effect that he believes it to be true. The verification shall be oral, or in writing, in conformity with the pleading verified.

Verification of written pleadings, §8383.

**§9591. Allegations Not Denied Are Admitted—Trial. §1763.—75.** Every material allegation in a complaint, or relating to a set-off in an answer, not denied by the pleading of the adverse party, shall, on the trial, be taken to be true, except that when a defendant, who has not been served with a copy of the complaint, fails to appear and answer, the plaintiff cannot recover without proving his case.

Judgment by default without proof on written pleadings, §9555.

**§9592. Pleadings to Be Made Certain. §1764.—76.** Either party may object to a pleading by his adversary, or to any part thereof that is not sufficiently explicit for him to understand it, or that it contains no cause of action or defense although it be taken as true. If the court deem the objection well founded, it shall order the pleading to be amended; and if the party refuse to amend, the defective pleading shall be disregarded.

**§9593. Variance to Be Disregarded. §1765.—77.** A variance between the proof on the trial, and the allegations in a pleading, shall be disregarded as immaterial, unless the court be satisfied that the adverse party has been misled to his prejudice thereby.

**§9594. Amendments—Continuances—Costs.** §1766.—78. The pleadings may be amended at any time before the trial, or during the trial, or upon appeal, to supply any deficiency or omissions in the allegations or denials, necessary to support the action or defense, when by such amendment substantial justice will be promoted. If the amendment be made after the issue, and it be made to appear to the satisfaction of the court that a continuance is necessary to the adverse party, in consequence of such amendment, a continuance shall be granted. The court may also, in its discretion, require as a condition of an amendment, the payment of costs to the adverse party.

Justice to whom change of venue taken may allow amendment of information—jury failing to agree—time for deliberation—continuance. *State ex rel. Adams v. Grimes*, 80 W. 14. It is discretionary with superior court to allow amendments, *State ex rel. Bagley v. Superior Court King County* 3 W 705. Constable's return cannot be amended, *Knorr v. Co-Operative Colony* 1 W 57.

**§9595. Set-off to Be Pleaded—Judgment.** §1767.—79. To entitle a defendant to any set-off he may have against the plaintiff, he must allege the same in his answer; and the statutes regulating set-offs in the superior court, shall in all respects be applicable to a set-off in a justice's court, if the amount claimed to be set-off, after deducting the amount [found] due the plaintiff, be within the jurisdiction of the justice of the peace; and judgment may, in like manner, be rendered by the justice in favor of the defendant for the balance found due the plaintiff.

Set-off in superior court, §8353.

Set-off of mutual judgments, §9512.

**§9596. Set-off More Than Jurisdiction.** §1768.—80. When the set-off of the defendant proved, shall exceed the claim of the plaintiff, and such excess in amount exceed the jurisdiction of a justice of the peace, the court shall allow such amount as is necessary to cancel the plaintiff's claim, and give the defendant a judgment for costs; but in such case, the court shall not render judgment for any further sum in favor of the defendant.

## PRELIMINARY EXAMINATIONS.

Evidence, for state, immunity does not apply §9220.

### OF THE EXAMINATION OF OFFENDERS, COMMITMENT FOR TRIAL, AND TAKING BAIL.

**§9597. Preliminary Examinations.** §1921.—233. Upon complaint being made to any justice of the peace, or judge of the superior court, in open court or in vacation, that a criminal offense has been committed, he shall examine on oath the complainant and any witness provided by him, and shall reduce the complaint to writing, and shall cause the same to be subscribed by the complainant, and if it shall appear that any offense has been committed of which the superior court has exclusive jurisdiction, the magistrate shall issue a warrant reciting the substance of the accusation, and requiring the officer to whom it shall be directed, forthwith to take the person accused and bring him before the person issuing the warrant unless he shall be absent or unable to attend thereto, then before some other magistrate of the county, to be dealt with according to law, and in the same warrant may require the officer to summon such witnesses as shall be therein named, to appear and give evidence on the examination.

All judicial officers are committing magistrates, §1847.

If it appear in course of trial justice has not jurisdiction—procedure, §9437.

Duty of prosecuting attorney, §9262.

Procedure if crime is committed in presence of justice, §9435.

Costs before committing magistrates, §9203.

Complainant may mandamus magistrate to act—can not refer case to prosecuting attorney—visiting judge can not be compelled to return to hear mandamus, *State ex rel. Romano v. Yoking* 43 W. 15.

Duty in cases of fugitives from other states, §9227.

Commitment proceedings may be had on holiday, §2700.

**§9598. Defendant Pursued Anywhere in the State.** §1922.—234. If any person against whom a warrant may be issued for an alleged offense, committed in any county, shall, either before or after the issuing of such warrant escape from, or be out of the county, the sheriff or other officer to



whom such warrant may be directed may pursue and apprehend the party charged, in any county in this state, and for that purpose may command aid, and exercise the same authority as in his own county.

**§9599. Bail Without Examination. §1923.** The magistrate before whom such accused person shall be brought, when the offense is bailable, may, at the request of such person, with or without examination, allow him to enter into recognizance, with sufficient sureties, to be approved by the magistrate, conditioned for his appearance in the superior court having jurisdiction of the offense. L. '91 18.

**§9600. Hearing—Bail—Commitment. §1924.—236.** If the defendant shall not enter into recognizance with sureties, the magistrate shall proceed to hear and examine the complaint, and may adjourn the examination from time to time, not exceeding in all ten days from the time such defendant shall have been brought before him, and in case of such adjournment, the magistrate may, if the offense be bailable, take a recognizance with sufficient sureties for the appearance of the defendant at such further examination; and if he fail to enter into such recognizance, he shall be ordered into custody until the time appointed for such examination.

**§9601. When Complainant Shall Pay Costs. §1925.—237.** If it should appear upon the whole examination that no offense has been committed, or that there is not probable cause for charging the defendant with an offense, he shall be discharged, and if in the opinion of the magistrate, the complaint was malicious, or without probable cause, and there was no reasonable ground therefor, the costs shall be taxed against the party making the complaint.

Costs against complaint and commitment for failure to pay, §9203.

Imprisonment of defendant or complaining witness for costs is valid, *Colby v. Backus* 19 W. 347.

**§9602. Trial by Justice if Within Jurisdiction. §1926.** If it shall appear that an offense has been committed of which a justice of the peace has jurisdiction, and one which would be sufficiently punished by a fine not exceeding one hundred dollars, if the magistrate having the complaint is a justice of the peace, he shall cause the complaint to be ordered, and proceed as in like cases before a justice of the peace; or if any other magistrate, he shall certify the papers, with a statement of the offense appearing to be proved, to the nearest justice of the peace, and shall, by order, require the defendant and the witnesses to enter into recognizances, with sufficient sureties, to be approved by the magistrate, for their appearance before such justice at the time and place stated in the order; and such justice shall proceed to the trial of the action as if originally commenced before him. L. '91 18.

Authority to sentence to jail, §9433.

within justice's jurisdiction, *State ex Murphy v. Taylor* 101 W. 148.

Superior judge will be prohibited from acting as committing magistrate if case

**§9603. Procedure if Justice Has Not Jurisdiction. §1927.** If it appear that a bailable offense has been committed, the magistrate shall order the defendant to enter into recognizance, with sufficient sureties, for his appearance in the superior court, to answer the charge, and if he shall not do so, or the offense be not bailable, he shall commit him to jail. The justice of the peace who committed the person, or the judge of the superior court to which the party is held to answer, may admit to bail in the amount required, and approve the sureties. The recognizance shall be conditioned in effect that the defendant will appear in the superior court to answer said charge whenever the same shall be prosecuted, and at all times, until discharged according to law, render himself amenable to the orders and process of the superior court, and if convicted, render himself in execution of the judgment. L. '91 18.

Recognizance at trial if justice cannot punish §9437.

**§9604. Justice May Associate Others. §1928.—240.** Any magistrate to whom complaint is made or before whom any defendant is brought, may associate with himself one or more magistrates of the same county, and they may, together, execute the powers and duties before mentioned; but no fees shall be taxed for such associates.

**§9605. Recognizance of Witnesses.** §1929. Where the person arrested is held to bail or committed to jail, or forfeits his recognizance, the magistrate shall recognize the witnesses for the prosecution to be and appear in the superior court to which the party is recognized, bailed, or committed, whenever their attendance shall be required.

**§9606. When Witnesses Required to Give Sureties.** §1930.—242. If the magistrate shall be satisfied that there is good cause to believe that any such witness will not perform the condition of his recognizance unless other security be given, such magistrate may order the witness to enter into recognizance with such sureties as may be deemed necessary for his appearance at court.

**§9607. Recognizance of Witness Not Sui Juris.** §1931.—243. When any married woman or a minor is a material witness, any other person may be allowed to recognize for the appearance of such witness, or the magistrate may, in his discretion, take the recognizance of such married woman or minor in a sum not exceeding fifty dollars which shall be valid and binding in law, notwithstanding the disability or [of] coverture or minority.

**§9608. Commitment of Witnesses—Depositions.** §1932. All witnesses required to recognize with or without sureties shall, if they refuse, be committed to the county jail by the magistrate, there to remain until they comply with such orders or be otherwise discharged according to law: Provided, That when the magistrate is satisfied that any witness required to recognize with sureties is unable to comply with such order, he shall immediately take the deposition of such witness and discharge him from custody upon his own recognizance. The testimony of the witness shall be reduced to writing by a justice or some competent person under his direction, and he shall take only the exact words of the witness; the deposition, except the cross-examination, shall be in the narrative form, and upon the cross-examination the questions and answers shall be taken in full. The defendant must be present in person when the deposition is taken, and shall have an opportunity to cross-examine the witnesses; he may make any objections to the admission of any part of the testimony, and all objections shall be noted by the justice; but the justice shall not decide as to the admissibility of the evidence, but shall take all the testimony offered by the witness. The deposition must be carefully read to the witness, and any corrections he may desire to make thereto shall be made in presence of the defendant by adding the same to the deposition as first taken; it must be signed by the witness, certified by the justice, and transmitted to the clerk of the superior court, in the same manner as depositions in civil actions. And if the witness is not present when required to testify in the case, either before the grand jury or upon the trial in the superior court, the deposition shall be submitted to the judge of such superior court, upon the objections noted by the justice, and such judge shall suppress so much of said deposition as he shall find to be inadmissible, and the remainder of the deposition may be read as evidence in the case, either before the grand jury or upon the trial in the court. L. '91 18.

**§9609. Deposition to Be in Writing and Signed.** §1933.—245. The testimony of the witness examined, shall be reduced to writing by the magistrate, or under his direction, when he shall think it necessary, and shall be signed by the witnesses.

**§9610. Transcript to Superior Court.** §16. It shall be the duty of all magistrates within this state, before whom any person or persons shall be committed or held to bail to answer for any crime, to return their proceedings, duly certified, including a copy of all recognizances taken by them, to the clerk of the superior court within ten days after the final hearing and commitment, or holding to bail, as aforesaid; and any justice of the peace who shall fail or neglect to make such return shall not be entitled to receive any fees or costs in such case. L. '91 18.

**§9611. Compounding Misdemeanors.** §1935.—247. When any person be committed to prison, or shall be under examination or recognizance to answer any charge for a misdemeanor for which the party injured may



have a remedy by civil action, except where the offense was committed upon a sheriff or other officer, justice, or violently, or with intent to commit a felony, if the party injured shall appear before the magistrate who made the commitment or took the recognizance, or is conducting the examination, and acknowledge in writing that he has received satisfaction for the injury, the magistrate may, in his discretion, on payment of all costs which may have accrued, discharge the recognizance, or supersede the commitment by an order under his hand, and may also discharge all recognizance and supersede the commitment of all witnesses in the case.

Compounding crimes, act '09, §8782; former law not repealed, §9189.

§9612. **Action on Witnesses Forfeited Recognizance.** §1936.—248. When any person under recognizance in any criminal prosecution, either to appear and answer before a justice, or to testify in any court, shall fail to perform the condition of any recognizance, his default shall be recorded; and it shall be the duty of the prosecuting attorney to proceed at once, by action against the person bound by recognizance, or such of them as he may elect.

§9613. **Costs to Be Certified Up.** §1937.—249. In all cases where any magistrate shall order a defendant to recognize for his appearance before a justice of the peace, or the superior court, he shall forward with the papers in the case, an abstract of the costs that have accrued in the case and such costs shall be subject to the final determination of the case.

## REPLEVIN.

§9614. **Replevin.** §1809.—121. The plaintiff in an action to recover the possession of personal property, may, at the time of issuing such summons, or at any time before answer, claim the immediate delivery of such property as provided in this act.

Search warrants for property, §9357.  
Replevin in superior court, §8421.

Complaint must state situs of property  
Woodbury v. Henningsen 11 W 12.

§9615. — **Affidavit.** §1810.—122. When a delivery is claimed, an affidavit shall be made by the plaintiff, or by some one in his behalf, showing:

1. That the plaintiff is the owner of the property claimed, (particularly describing it,) or is lawfully entitled to the possession thereof, by virtue of a special property therein, the facts in respect to which shall be set forth.
2. That the property is wrongfully detained by the defendant.
3. The alleged cause of the detention thereof, according to his best knowledge, information and belief.
4. That the same has not been taken for a tax, assessment or fine, pursuant to a statute, or seized under an execution or attachment against the property of the plaintiff, or if so seized, that it is by statute exempt from such seizure, and
5. The actual value of the property.

§9616. **Order to Levy.** §1811.—123. The justice shall thereupon, by an indorsement in writing upon the affidavit, order the sheriff or any constable of the county, to take the same from the defendant and deliver it to the plaintiff upon receiving a proper bond.

§9617. **Bond—Levy—Service on Defendant.** §1812.—124. Upon the receipt of the affidavit and order with a bond, executed by two or more sureties, approved by the sheriff or constable, to the effect, that they are bound in double the value of the property as stated in the affidavit, for the prosecution of the action, for the return of the property to the defendant, if return thereof, be adjudged, and for the payment to him of such sum as may for any cause be recovered against the plaintiff, the sheriff or constable shall forthwith take the property described in the affidavit, if it be in the possession of the defendant or his agent, and retain it in his custody. He shall also, without delay, serve on the defendant a copy of the affidavit, order and bond.

delivering the same to him personally if he can be found within the county, or to his agent from whose possession the property is taken, or if neither can be found in the county, by leaving them at the usual abode of either within the county, with some person of suitable age and discretion; or if neither have any known place of abode in the county, by putting them into the post office, directed to the defendant at the post office nearest to him.

**§9618. Justification of Sureties. §1813.—125.** The defendant may, within two days after the service of a copy of the affidavit, order and bond, give notice to the officer that he excepts to the sufficiency of the sureties. If he fail to do so, he shall be deemed to have waived all objection to them. When the defendant excepts, the sureties shall justify upon one day's notice before the justice; and the officer shall be responsible for the sufficiency of the sureties, until the objection to them is either waived as above provided, or until they justify, or new sureties be substituted and they justify. If the defendant except to the sureties, he cannot reclaim the property as provided in the next section.

Failure of sureties to justify exonerates them, *Rinear v. Skinner* 20 W. 541.

**§9619. Counter-Bond. §1814.—126.** At any time before the delivery of the property to the plaintiff, the defendant may, if he do not except to the sureties of the plaintiff, require the return thereof upon giving to the officer a bond executed by two or more sufficient sureties, to the effect that they are bound in double the value of the property as stated in the affidavit of the plaintiff, for the delivery thereof to the plaintiff, if such delivery be adjudged, and for the payment to him of such sum as may for any cause be recovered against the defendant. If a return of the property be not so required, within two days after the taking and serving of notice to the defendant, it shall be delivered to the plaintiff, except as provided in this chapter.

**§9620. Justification of Counter-Bond. §1815.—127.** The defendant's sureties, upon one day's notice to the plaintiff, or his attorney shall justify before the justice, and upon such justification, the officer shall deliver the property to the defendant. The officer shall be responsible for the defendant's sureties until they justify, or until the justification is complete or expressly waived, and may retain the property until that time, but if they, or others in their place, fail to justify at the time appointed, he shall deliver the property to the plaintiff.

**§9621. Breaking Building for Levy. §1816.—128.** If the property, or any part thereof, be concealed in a building or inclosure, the officer shall publicly demand its delivery, and if it be not delivered, he shall cause the building or inclosure to be broken open and take the property into his possession.

Sheriff may break building, §8428.

**§9622. Keeping of Property. §1817.—129.** When the officer shall have taken property, as in this chapter provided, he shall keep it in a secure place, and deliver to the party entitled thereto, upon receiving his lawful fees for taking, and his necessary expenses for keeping the same.

**§9623. Claim by Third Party—Bond. §1818.—130.** If the property taken be claimed by any other person than the defendant or his agent, and such person make affidavit of his title thereto, or his right to the possession thereof, stating the ground of such title or right, and serve the same upon the officer before the delivery of the property to the plaintiff, the sheriff shall not be bound to keep the property or deliver it to the plaintiff, unless the plaintiff, on demand of him or his agent, indemnify the officer against such claim by a bond executed by two sufficient sureties, accompanied by their affidavits, that they are each worth double the value of the property, as specified in the affidavit of the plaintiff, over and above their debts and liabilities, exclusive of property exempt from execution and freeholders or householders of the county; and no claim to such property by any other person than the defendant or his agent, shall be valid against the officer, unless made as aforesaid, and notwithstanding such claim, when so made, he may retain the property a reasonable time to demand such indemnity.



Claim in superior court, §8430.

Claim to property on execution, §9527.

Constable's right to indemnity from plaintiff, *Brotton v. Lunkley* 11 W. 581.

§9624. Return. §1819.—131. The officer shall return the order and affidavit with his proceedings thereon, to the justice within five days after taking the property mentioned therein.

### SMALL CLAIMS DEPARTMENT.

AN ACT creating "small claims department of justice's courts", defining their jurisdiction and providing a system of practice and procedure therefor. Approved March 20, 1919. L. '19 ch 187.

§9624-1. Jurisdiction Under \$20. §1. That in every justice's district of this state there shall be created and organized by the justice of the peace thereof a department to be known as the "small claims department of the justice's court," which shall have jurisdiction, but not exclusive, in cases for the recovery of money only where the amount claimed does not exceed twenty dollars (\$20.00), and where the defendant resides within the district of such justice court.

§9624-2. Action by Verified Claim. §2. Actions in such small claims departments shall be deemed commenced by the plaintiff appearing before the justice of the peace and subscribing to and verifying a claim as hereinafter provided.

§9624-3. Hearing—Notice—Fees. §3. Upon filing said claim such justice of the peace shall appoint a time for the hearing of said matter and shall cause to be issued a notice of the claim, as hereinafter provided, which shall be served upon the defendant.

Said justice of the peace shall collect in advance upon each claim the sum of one dollar (\$1.00), and this shall be the only fee for such justice of the peace to be charged or taxed against the plaintiff in such action during the pendency or disposition of said claim: Provided, however, that when any such "small claims department" shall be created and organized in any justice's district as herein provided, in which the justice is not paid a salary, he may be paid as compensation for conducting such department from the county treasury of his county such monthly salary as the county court and commissioners of said county shall deem just and proper.

§9624-4. Service—Fee. §4. Said notice of claim shall be served by the officers provided for in [§9632] Section 1760 of Remington's 1915 Codes and Statutes of Washington, and the same shall be served in the manner provided for in [§9628] Section 1761 of said Codes and Statutes, but no other paper is to be served with said notice. The officer serving such notice shall be entitled to receive from the plaintiff fifty cents (\$.50) for such service; which sum, together with the fee of the justice of the peace named in section 3, shall be added to any judgment given for plaintiff.

§9624-5. Contents of Claim. §5. The claim hereinbefore referred to shall contain the name of the plaintiff and the name of the defendant, followed by a statement, in brief and concise form, of the nature and amount of said claim and the time of the accruing of such claim; and shall also state the name and residence of the defendant, if same be known to the plaintiff, for the purpose of serving the notice of claim on such defendant.

§9624-6. Contents of Notice—Return—Default. §6. Said notice of claim shall be directed to the defendant, naming him, and shall contain a statement in brief and concise form notifying such defendant of the name, address, amount and natures of the alleged claim of plaintiff, and directing and requiring defendant to appear personally in court before the justice of the peace of said justice's court at a time certain, which shall not be less than five nor more than ten days from the date of service of such notice; said notice shall further provide that in case of failure to so appear, judgment will be given against defendant for the amount of such claim.

§9624-7. **Verification — Assignee's Denied.** §7. All claims must be verified by the real claimant, and no claim shall be filed or prosecuted in such department by the assignee of such claim.

§9624-8. **Attorneys Not Allowed — Trial — Judgment.** §8. No attorney at law nor any person other than the plaintiff and defendant, shall concern himself or in any manner interfere with the prosecution or defense of such litigation in said department without the consent of the justice of said justice's court; nor shall it be necessary to summon witnesses, but the plaintiff and defendant in any claim shall have the privilege of offering evidence in their behalf by witnesses appearing at such hearing, and the justice may informally consult witnesses or otherwise investigate the controversy between the parties, and give judgment or make such orders as may by him be deemed to be right, just and equitable for the disposition of the controversy.

§9624-9. **No. Pleadings — Writs Limited.** §9. No formal pleading, other than the said claim and notice, shall be necessary to define the issue between the parties: and the hearing and disposition of all such actions shall be informal, with the sole object of dispensing speedy and quick justice between the litigants: Provided, that no attachment, garnishment or execution shall issue from the small claims department on any claim except as hereinafter provided.

§9624-10. **Loser to Pay.** §10. If the judgment or order be against the defendant, it shall be his duty to pay the same forthwith upon such terms and conditions as the justice of such court shall prescribe.

§9624-11. **Judgment Certified — Collection — Lien.** §11. The judgment of said court shall be conclusive. If the defendant fails to pay the judgment according to the terms and conditions thereof, the justice before whom such hearing was had, may, on application of the plaintiff, certify such judgment in substantially the following form:

Washington.

In the Justice's Court of.....County, Before.....  
Justice of the Peace for.....Precinct.  
.....Plaintiff,  
vs.  
.....Defendant.

In the Small Claims Department.

This is to certify that in a certain action before me, the undersigned, had on this the .....day of.....19....., wherein...  
was plaintiff and .....defendant, jurisdiction of said defendant having been had by personal service (or otherwise) as provided by law. I then and there entered judgment against said defendant in the sum of..... Dollars; which judgment has not been paid.

Witness my hand this.....day of....., 19.....

Justice of the Peace sitting in the  
Small Claims Department.

The justice of the peace of said justice's court shall forthwith enter such judgment transcript on the judgment docket of such justice's court; and thereafter garnishment, execution and other process on execution provided by law may issue thereon, as obtains in other cases of judgments of justice's courts, and transcripts of such judgments may be filed and entered in judgment lien dockets in superior courts with like effect as in other cases.

§9624-12. **Separate Docket.** §12. Each justice of the peace shall keep a separate docket for the small claims department of his court, in which he shall make a permanent record of all proceedings, orders and judgments had and made in such claims department.



## SUMMONS.

Appearance, one hour allowed §9419.

## COMMENCEMENT OF ACTIONS—SERVICE AND RETURN OF PROCESS.

§9625. **Summons—Complaint.** §1712.—24. Civil actions in the several justices' courts of this state may be instituted either by the voluntary appearance and agreement of the parties, by the service of a summons, or by the service upon a defendant of a true copy of the complaint and notice, which notice shall be attached to the copy of the complaint and cite the defendant to be and appear before the justice at the time and place therein specified, which shall not be less than six nor more than twenty days from the date of filing the complaint.

Title of action is good if it designate justice before whom brought without precinct, State ex rel. Maltby v. Superior Court 7 W. 223. 86.

Claim against S. Baxter & Co. and sum- Nelson v. Campbell 1 W. 261.

§9626. **Summons—Verified Claim.** §1713.—25. A party desiring to commence an action before a justice of the peace, for the recovery of a debt by summons, shall file his claim with the justice of the peace, verified by his own oath, or that of his agent or attorney, and thereupon the justice of the peace shall, on payment of his fees, if demanded, issue a summons to the opposite party, which summons shall be in the following form or as nearly as the case will admit, viz:

State of Washington, \_\_\_\_\_ County.—ss.

To the Sheriff or Any Constable of Said County:

In the name of the State of Washington, you are hereby commanded to summon ..... if he (or they) be found in your county to be and appear before me at \_\_\_\_\_ on \_\_\_\_\_ day of \_\_\_\_\_ at — o'clock p. m. or a. m. to answer the complaint of \_\_\_\_\_ for a failure to pay him a certain demand, amounting to \_\_\_\_\_ dollars and \_\_\_\_\_ cents, upon —(here state briefly the nature of the claim) and of this writ make due service and return.

Given under my hand this \_\_\_\_\_ day of \_\_\_\_\_ 18—.

\_\_\_\_\_ Justice of the Peace.

And the summons shall specify a certain place, day and hour for the appearance and answer of the defendant, not less than six nor more than twenty days from the date of filing plaintiff's claim with the justice, which summons shall be served at least five days before the time of trial mentioned therein, and shall be served by the officer delivering to the defendant, or leaving at his place of abode with some person over twelve years of age, a true copy of such summons, certified by the officer to be such.

§9627. **Complaint and Notice.** §1714.—26. Any person desiring to commence an action before a justice of the peace, by the service of a complaint and notice, can do so by filing his complaint verified by his own oath or that of his agent or attorney with the justice, and when such complaint is so filed, upon payment of his fees if demanded, the justice shall attach thereto a notice, which shall be substantially as follows:

State of Washington \_\_\_\_\_ County.—ss.

To \_\_\_\_\_

[In the name of the State of Washington],

You are hereby notified to be and appear at my office in \_\_\_\_\_ on the \_\_\_\_\_ day of \_\_\_\_\_, 18—, at the hour of — m., to answer to the foregoing complaint, or judgment will be taken against you as confessed and the prayer of the plaintiff granted. \_\_\_\_\_, J. P.

Dated \_\_\_\_\_, 18—.

**§9628. — Service. §1715.—27.** The complaint and notice shall be served at least five days before the time mentioned in the notice, for the defendant to appear and answer the complaint, by delivering to the defendant, or leaving at his place of abode, with some person over twelve years of age, a true copy of the complaint and notice, certified by the officer or person making the service to be such.

Service on child under 12 years quashed after trial, *Woodbury v. Henningsen* 11 W. 12. Service on one partner will not warrant personal judgment against all, *McCoy v. Bell* 1 W. 504.

**§9629. Process, Style and Service. §1716.** All process issued by justices of the peace shall run in the name of the State of Washington, be dated the day issued and signed by the justice granting the same and all executions and writs of attachment or of replevin shall be served by the sheriff or some constable of the county in which the justice resides, but a summons or notice and complaint may be served by any citizen of the State of Washington over the age of twenty-one years and not a party to the action. L '03 18.

**§9630. — Return. §1717.** Every constable or sheriff serving process or complaint and notice shall return in writing, the time, manner and place of service and endorse thereon the legal fees therefor and shall sign his name to such return, and any person other than one of said officers serving summons or complaint and notice shall file with the justice, his affidavit stating the time, place and manner of the service of such summons or notice and complaint: Provided, That no fee shall be allowed for the service of a summons or notice and complaint by a person other than an officer. L '03 18.

**§9631. — Appointment to Serve. §1718.** Any justice may, by appointment in writing, authorize any person other than the parties to the proceeding or action, to serve any subpoena, summons, or notice and complaint issued by such justice; and any such person making such service shall return on such process or paper, in writing, the time and manner of service, and shall sign his name to such return, and be entitled to like fees for making such service as a sheriff or constable, and shall endorse his fees for service thereon: Provided, It shall not be lawful for any justice to issue process or papers to any person but a regularly qualified sheriff or constable, in any precinct where such officers reside, unless from sickness or some other cause said sheriff or constable is not able to serve the same: Provided further, That it shall be lawful for notice and complaint or summons in a civil action in the justice court to be served by any person over the age of twenty-one years and not a party to the action in which the summons or notice and complaint shall be issued without previous appointment by the justice. L '03 18.

Conditions warranting special appointment to serve process will be presumed to exist, *Noerdlinger v. Huff* 31 W. 360.

**AN ACT** relating to service of process in justice courts. Approved March 13 1909. Laws '09 p 433.

**§9632. — Officer Salaried, Fees to Be Turned In. §1.** All process in actions and proceedings in justice courts, having a salaried constable, when served by an officer, shall be served by such constable or by the sheriff of the county or his duly appointed deputy; and all fees for such service shall be paid into the county treasury.

**§9633. Proof of Service. §1719.—31.** Proof of service in either of the above cases shall be as follows: When made by a constable or sheriff his return signed by him and indorsed on the paper or process. When made by any person other than such officer, then by the affidavit of the person making the service.



**§9634. Service by Publication. §1720.—32.** In case personal service cannot be had by reason of the absence of the defendant from the county in which the action is sought to be commenced, it shall be proper to publish the summons or notice with a brief statement of the object and prayer of the claim or complaint, in some weekly newspaper published in the county wherein the action is commenced; or if there is no paper published in such county, then in some newspaper published in the nearest adjoining county, which notice shall be published not less than once a week for three weeks prior to the time fixed for the hearing of the cause, which shall not be less than four weeks from the first publication of said notice. Said notice may be substantially as follows:

State of Washington County of \_\_\_\_\_ ss.—In Justice's Court, \_\_\_\_\_  
Justice.

To \_\_\_\_\_.

[In the name of the State of Washington],

You are hereby notified that \_\_\_\_\_ has filed a complaint (or claim as the case may be) against you in said court which will come on to be heard at my office in \_\_\_\_\_ in \_\_\_\_\_ county, Wash., on the \_\_\_\_\_ day of \_\_\_\_\_ A. D. 18—, at the hour of — o'clock — m., and unless you appear and then and there answer, the same will be taken as confessed and the demand of the plaintiff granted. The object and demand of said claim (or complaint, as the case may be) is (here insert a brief statement.) \_\_\_\_\_, J. P.

Complaint filed \_\_\_\_\_, A. D. 18—. —

A judgment in attachment proceedings, except what has been previously levied upon service by publication, gives no right upon by attachment or other process, *Cliff to levy upon debtor's personal property, Ford v. Pateros Transfer Co. 71 W. 665.*

**§9635. — Proof. §1721.—33.** Proof of service, in case of publication, shall be the affidavit of the publisher, printer, foreman, or principal clerk showing the same.

**§9636. Service May Be Admitted. §1722.—34.** The written admission of the defendant, his agent or attorney, endorsed upon any summons, complaint and notice, or other paper, shall be complete proof of service in any case.

**§9637. When Jurisdiction Vested. §1723.—35.** The court shall be deemed to have obtained possession of the case from the time the complaint or claim is filed, after completion of service, whether by publication or otherwise. And shall have control of all subsequent proceedings.

**§9638. Docket. §1724.—36.** Every justice of the peace shall keep a docket in a well bound book in which he shall enter:

1. The titles of all actions commenced before him.
2. The object of the action or proceeding, and if a sum of money be claimed, the amount of the demand.
3. The date of the notice and the time of its return; and if an order to arrest the defendant be made, the statement of the facts on which the order is issued.
4. The time when the parties, or either of them, appear, or their non-appearance, if default be made.
5. A brief statement of the nature of the plaintiff's demand, and the amount claimed; and if any set-off be pleaded, a similar statement of the set-off, and the amount estimated and every motion, rule order, and exception with the decision of the court thereon.
6. Every continuance, stating at whose request, and for what time.
7. The demand for a trial by jury, when the same is made, and by whom made; the order for the jury, and the time appointed for the trial and return of the jury.
8. The names of the jury who appear and are sworn; the names of witnesses sworn, and at whose request.
9. The verdict of the jury, and when received; and if the jury disagree and are discharged, the fact of such disagreement and discharge.
10. The judgment of the court, and the time when rendered.

11. The time of issuing execution, and the name of the officer to whom delivered, and an account of the debt and costs, and the fees due to each person separately.

12. The fact of an appeal having been made and allowed, and the time when.

13. Satisfaction of the judgment, or any money paid thereon, and the time when.

14. And such other entries as may be material.

Lost records may be restored, State ex Judgment entered ten days after trial rel. Brockway v. Whitehead 88 W. 549. good, Munday v. Kern 74 W. 477.

§9639. Security for Costs. §1725. Whenever the plaintiff is a non-resident of the County, the Justice may require of him security for the costs in a sum not exceeding fifty dollars at the time of the commencement of the action. Provided, however, That after an action has been commenced by a non-resident plaintiff and no security given for costs, the defendant may require such security by motion; when allowed all proceedings shall be stayed until such security has been given. L '05 27.

## TRIALS.

Trial by the court, §9556.

Less than twelve may be provided.

Trial by jury in criminal cases, §9436.

Const., art. 1, §21.

§9640. Demand for Jury—Fee. §1770. After the appearance of the defendant and before the justice shall proceed to enquire into the merits of the cause, either party may demand a jury to try the action, which jury shall be composed of six good and lawful men having the qualifications of jurors in the superior court of the same county, unless the parties shall agree upon a less number; provided, that the party demanding the jury shall first pay to the justice the sum of six dollars, which shall be paid over by the justice to the jury before they are discharged and said amount shall be taxed as costs against the losing party.

§9641. Continuance. §1771. When a jury is demanded the trial of the case must be adjourned until the time fixed for the return of the jury; if neither party desire an adjournment the time must be determined by the justice and must be on the same day or within the next two days. The jury must be immediately selected as herein provided.

Continuances generally, §9427.

§9642. Panel—Striking Jury. §1772. The justice shall write in a panel the names of eighteen persons, citizens of the county, from which the defendant his agent or attorney must strike one name, the plaintiff his agent or attorney one, and so on alternately until each party shall have stricken six names, and the remaining six names, shall constitute the jury to try such case; and if either party neglect or refuse to aid in striking the jury as aforesaid, the justice shall strike the name in behalf of such party.

§9643. Summons for Jury—Form. §1773. The justice shall thereupon issue a summons for the jury in which the following form shall be observed in substance:

The State of Washington, County of.....[ss.]

The State of Washington to the Sheriff or any Constable of said county:

You are hereby commanded to summon.....to appear before me, at my office in.....precinct, said county on the ..... day of ....., A. D. 18.. at.... o'clock in the ....noon to serve as jurors in a case pending before me then and there to be tried. And this they shall in nowise omit: And have you then and there this writ with your doings thereon.

Given under my hand this the ..... day of ..... A. D. ....

A..... B.....

Justice of the Peace.

Which summons shall be personally served upon the persons named, and the same shall be returned with the names of the persons summoned at the time appointed for the trial of the cause. L. '88 118.



§9644. **Oath of Jury.** §1776.—88. When the jury is selected, the justice shall administer to them an oath or affirmation, well and truly to try the cause.  
B. C. §6625; 2 H. C. §1525.

§9645. **Verdict.** §1777.—89. When the jury have agreed on their verdict, they shall deliver the same to the justice, publicly, who shall enter it on his docket.

§9646. **Disagreement—New Venire.** §1778.—90. Whenever a justice shall be satisfied that a jury, sworn in any civil cause before him, having been out a reasonable time, cannot agree on their verdict, he may discharge them, and issue a new venire, unless the parties consent that the justice may render judgment on the evidence before him, or upon such other evidence as they may produce.

§9647. **Juror Not Appearing.** §1779.—91. Every person who shall be duly summoned as a juror, and shall not appear nor render a reasonable excuse for his default, shall be subject to a fine not exceeding ten dollars.

**AN ACT relating to the conduct of judges of courts not of record.** Approved March 17 1911. Laws '11 p 521.

§9648. **Unseemly Language by Justice—Penalty.** §1. It shall be a misdemeanor for any judge or justice of any court not of record, during the hearing of any cause or proceeding therein, to address any person in his presence in unfit, unseemly or improper language.

## VENUE.

### CHANGE OF VENUE.

§9649. **Change of Venue.** §1938.—250. If previous to the commencement of any trial before a justice of the peace, the defendant, his attorney or agent, shall make and file with the justice an affidavit that the deponent believes that the defendant cannot have an impartial trial before such justice, it shall be the duty of the justice to forthwith transmit all papers and documents belonging to the case, to the next nearest justice of the peace in the same county, who is not of kin to either party, sick, absent from the county, or interested in the result of the action either as counsel or otherwise. The justice to whom such papers and documents are so transmitted, shall proceed as if the suit had been instituted before him. Distance as contemplated by this section, shall mean to be by the nearest traveled route. The costs of such change of venue shall abide the result of the suit.

Change of venue, another section, §9650 right, State ex rel. Lathrop v. Hauptly 86 W. 199.  
Action dismissed for wrong venue, Knoff v. Co-Operative Colony 1 W. 57.

Objection will avail defendant after trial on merits, *id.* Change of venue will lie from police justice, State ex rel. Hall v. Wicker 60 W. 238.

Fact that state has not right of change of venue does not invalidate defendant's Change will lie from police justice city of the third class to other nearest justice, Puyallup v. Snyder 13 W. 572.

§9650. **Change of Venue.** §1881.—193. Change of venue may be allowed for the same causes for which they are allowed in the superior court.

Venue of actions §9559.

**LIENS****AGISTERS §9651.**

Animals doing damage §1975; hogs at large §2018.

Attorneys §185.

BAILEES §9655.

Bill lading not to affect §470.

Carriers §453.

When bill lading issued §453.

CHATTEL §9661.

Cities for public utility service §1225.

CONSTRUCTION §9665.

Eminent domain, how lienors made parties §7648.

FARM §9666.

Fires, cost of extinguishing when started. etc., unlawfully §2581.

Horticultural disinfection §2720.

INNKEEPERS §9675.

LANDLORD §9677.

LOGGERS §9679.

MARITIME §9699.

MECHANICS §9705.

Nuisance costs, etc., abatement of house of prostitution §8241.

Partition of realty, lienors as parties §§8287, 8300.

Registered land, how enforced §5799.

SIRES §9729.

Taxes prior lien on realty §6974; personalty §6979.

Vendor's, bill lading defeats §469.

WAGES §9734.

**AGISTERS.**

**AN ACT** for the protection of farmers, ranchmen, herders of cattle, tavern keepers, livery and boarding stable keepers, and other persons for herding, keeping, pasturing, feeding and caring for stock. Approved March 17, 1909. Laws '09 p 636.

§9651. **Agister's Lien.** §1. Any farmer, ranchman, herder of cattle, tavern keeper, livery and boarding stable keeper or any other person, to whom any horses, mules, cattle or sheep shall be entrusted for the purpose of feeding, herding, pasturing, and training, caring for or ranching shall have a lien upon said horses, mules, cattle or sheep for such amount that may be due for said feeding, herding, pasturing, training, caring for, and ranching, and shall be authorized to retain possession of said horses, mules or cattle or sheep, until said amount is paid.

Lie inferior to prior chattel mortgage, Levitch v. Link 95 W. 639.

No lien for keep of horses for use and agreement to return on demand, Donofrio v. Watson Bros. 83 W. 41.

Act not retroactive—priority of mortgage. National City Bank v. Henderson 59 W. 354.

Person employed to herd sheep is not entitled to lien, Hooker v. McAllister 12 W. 46.

Horse trainer waives lien by taking bill of sale or chattel mortgage and bona fide mortgagee after services rendered has priority, Murray v. Guse 10 W. 25.

§9652. **Sale.** §2. Any person having a lien under the provisions of Section 1 of this act for feeding, herding, pasturing, training, caring for or ranching any horses, mules, cattle or sheep, shall retain such animal for a period of ten (10) days, at the expiration of which time, if the owner of such animal does not satisfy such lien, the sheriff or any constable may sell such animal at public auction after giving the owner ten days' notice of the time and place of such sale by delivering a copy of such notice to the owner, or in case personal service cannot be had, by publishing same in a newspaper of general circulation in said county where said feeding, herding, pasturing, training, caring for, and ranching was furnished; if there be no paper of general circulation in said county, then by posting notices of the time and place of such sale in three conspicuous places in said county, and after satisfying the lien and costs that may accrue, any residue remaining shall be paid to the owner of said animal or person who may be lawfully entitled to the same.

§9653. **Delivery Not Waiver.** §3. Whenever any horses, mules, cattle or sheep shall be entrusted for the purpose of feeding, herding, pasturing, training, caring for, and ranching to any farmer, ranchman, herder of cattle, tavern keeper, livery or boarding stable keeper, continuously for some time,



either definite or indefinite, the voluntary delivery of the same to the owner or his agent shall not waive or defeat the lien provided for in Section 1 of this act, and the person having such lien may enforce his lien against said property in any court of competent jurisdiction at any time within ten (10) days after parting with the possession thereof; Provided, That such lien shall not attach to the interest nor affect the rights of a third person who may have acquired an interest in or title to an animal against which a lien is claimed, for value and without knowledge of the claimed lien, while such animal is not in possession of the claimant.

**§9654. Enforcing Lien. §2.** Any person having a lien under the provisions of section 1 of this act, may enforce the same by an action in any court of competent jurisdiction; and said property may be sold on execution for the purpose of satisfying the amount of such judgment and costs of sale, together with the proper costs of keeping the same up to the time of said sale.

### BAILEES.

**AN ACT concerning liens of commission merchants, carriers, wharfingers, and warehousemen.** Approved December 7, 1881. C81 §§1980-85.

*Amended 1927  
C. 144*  
**§9655. Bailee's Lien. §1980.—1.** That whenever property upon which charges for advances, freight, transportation, wharfage, or storage, due and unpaid, and a lien shall remain and be held in store by the person, or persons in whose favor such lien exists uncalled for, it shall be lawful for such person or persons to cause such property to be sold as is herein provided, **Records and receipts by bailees — sale, Unclaimed goods, sale, etc. §3652.** etc. §3650. **Pledged property, how foreclosed or sold, Nagel v. Ham, Yearsley & Ryrie 88 W 99.**

**§9656. — Sale of Perishable Property. §1981.—2.** If said property consists of live stock, the maintenance of which at the place where kept is wasteful and expensive in proportion to the value of the animals, or other of the perishable property liable, if kept, to destruction, waste or great depreciation, the person or persons having such lien, may sell the same upon giving ten days' notice.

**Sale by bailees generally §3652.**

**§9657. — Sale of Property. §1982.—3.** All other property upon which such charges may be unpaid, due, and a lien after the same shall have remained in store uncalled for, for a period of thirty days after such charges shall have become due, may be sold by the person or persons, having a lien for the payment of such charges upon giving ten days' notice: Provided, that when the property can be conveniently divided into separate lots or parcels, no more lots or parcels shall be sold than shall be sufficient to pay the charges due on the day of sale, and the expenses of the sale.

**§9658. Application of Proceeds. §1983.—4.** The moneys arising from sales made under the provisions of this act shall first be applied to the payment of the costs and expenses of the sale, and then to the payment of the lawful charges of the person or persons having a lien thereon for advances, freight, transportation, wharfage or storage, for whose benefit the sale shall have been made; the surplus, if any, shall be retained subject to the future lawful charge of the person or persons for whose benefit the sale was made, upon the property of the same owners still remaining in store uncalled for, if any there be, and to the demand of the owner of the property who shall have paid such charges or otherwise satisfied such lien, and all moneys remaining uncalled for, for the period of three months, shall be paid to the county treasurer, and shall remain in his hands a special fund for the benefit of the lawful claimants thereof.

**Court properly ordered balance paid over to county treasurer, Koyukuk Mining Co. v. Van de Vanter 30 W. 385.**

**§9659. Contract May Waive Lien. §1984.—5.** Nothing in this act contained shall be so construed as to alter or affect the terms of any special contract in writing, made by the parties as to the advances, affreightment, wharfage or storage; but when any such special contract shall have been made, its terms shall govern irrespective of this act.

**§9660. Notice of Sale.** §1985.—6. All notices required under this act, shall be given as is or may be by law provided in case of sale of personal property upon execution.

**CHATTEL.**

**AN ACT** to secure and perpetuate liens upon chattels for labor, skill and material expended thereon, and providing for the enforcement thereof. Approved March 6, 1905. Laws '05 p 137.

**§9661. Right to Lien.** §1. Every person, firm or corporation who shall have performed labor or furnished material in the construction or repair of any chattel at the request of its owner, shall have a lien upon such chattel for such labor performed or material furnished, notwithstanding the fact that such chattel be surrendered to the owner thereof: Provided, however, That no such lien shall continue, after the delivery of such chattel to its owner, as against the rights of third persons who, prior to the filing of the lien notice as hereinafter provided for, may have acquired the title to such chattel in good faith, for value and without actual notice of the lien. L. 17 229, R.&B. §1154.

Lien superior to conditional sale—Is due process of law, *Crosier v. Cudihee* 85 W. 237.

Lienor combined lienable and nonlienable items, all denied, *In re Shute* 233 Fed. 544.

Chattel mortgage prior to later chattel lien, *Rothweiler v. Winton Motor Car Co.* 92 W. 215.

Affirmed, *Levitch v. Link*, 95 W. 639.

Conditional sale, vendor in possession created valid lien for repairs, *Barbour v. Hodge* 99 W. 578.

Plumber not entitled to lien, *Modern Plumbing Co. v. American Soda Fountain Co.* 57 W. 148.

Defendant may have jury trial after lien action abandoned—personal judgment in action, to foreclose—coporate capacity to sue, *Pacific Iron etc. Works v. Goerig* 55 W. 149.

**§9662. Lien Notice.** §2. In order to make such lien effectual the lien claimant shall, within sixty days from the date of delivery of such chattel to the owner, file in the office of the auditor of the county in which such chattel is kept, a lien notice, which notice shall state the name of the claimant, the name of the owner, a description of the chattel upon which the claimant has performed labor or furnished material, the amount for which a lien is claimed and the date upon which such expenditure of labor or material was completed, which notice shall be signed by the claimant or some one on his behalf, and may be in substantially the following form:

**Chattel Lien Notice.**

.....Claimant, against.....Owner.  
Notice is hereby given that.....has and claims a lien upon (here insert description of chattel), owned by.....for the sum of.....dollars, for and on account of labor, skill and material expended upon said.....which was completed upon the.....day of....., 19.....

.....Claimant. L. '17 229, R.&B. §1155.

Foreclosure by publication of notice, if invalid as to third parties lien is invalid between the parties, *Campeau v. White v. Powers* 89 W. 502.

Notice must be filed in county of situs— *Jamison* 88 W. 109.

**§9663. Priority of Lien.** §3. The liens created by this chapter are preferred to any lien, mortgage or other encumbrance which may attach subsequently to the time of the commencement of the performance of the labor, or the furnishing of the materials for which the right of lien is given by this chapter, and are also preferred to any lien, mortgage or other encumbrance which may have attached previously to that time, and which was not filed or recorded so as to create constructive notice of the same prior to that time, and of which the lien claimant has no notice. L. '17 229, R.&B. §1156.

Priority of wages to materials in all liens §9665c.

**§9664. Enforcement of Lien.** §4. The lien herein provided for may be enforced against all persons having a junior or subsequent interest in any such chattel, by notice and sale in the same manner that a chattel mortgage is foreclosed [§9749] or by decree of any court in this state exercising original equity jurisdiction in the county wherein such chattel may be, in an action commenced within nine months after the filing of such lien notice, and if no such action shall be commenced within such time such lien shall cease. L. '17 229, R.&B. §1157.



**§9664a. Filing of Notice.** §5. Upon presentation of such lien notice to the Auditor of any County, and the payment to him of fifteen cents, he shall file the same, and endorse thereon the time of the reception, the number thereof, and shall enter the same in a suitable book or file (but need not record the same). Such book or file shall have herewith an alphabetic index, in which the County Auditor shall index such notice by noting the name of the owner, name of lien claimant, description of property, date of lien (which shall be the date upon which such expenditure of labor, skill or material was completed), date of filing and when released, the date of release.

Venue when property removed and notice filed in county other than original situs, *Barbour v. Hodge* 99 W. 578.

## CONSTRUCTION.

This chapter refers to the lien act of 1881 consisting of 43 sections providing for various liens.

**§9665. Remedies as in Logger's Liens.** §1978.—40. All rights secured to the holders of liens upon logs, under the provisions of chapter 137 [§§9679-98], shall inure to the benefit of those holding liens under the provisions of this chapter, and the said lien holders hereunder shall have the same right to have their liens recorded, the same right of foreclosure, of joinder of parties, of judgment over against the person primarily liable, and against any person who shall injure or impair their lien or any of their right as are above secured to the holder of liens upon logs under said act.

Several laborers may join in lien claim verified by one and collect such claim with attorney's fees prior to attaching creditors against lessee (landlord not a proper party) though their lien notice de-

fective, but not objected to, *Pain v. Isaacs* 10 W. 173.  
Filing of claim of lien necessary to defeat purchaser of crops, *Chute v. Brown* 103 W. 364.

**§9665a. Definition of Terms.** §1979.—41. In construing the provisions of this act; words used in the masculine gender include the feminine and neuter, the singular number includes the plural and the plural the singular; the word person includes a corporation as well as a natural person and the word writing includes printing.

**§9665b. Liberal Construction of Act.** §1981.—43. This act establishes the law of this state respecting the subject to which it relates, and its provisions and all proceedings under it, are to be liberally construed with a view to effect its object.

**AN ACT** relating to liens upon chattels, and amending sections 1154, 1155, 1156, 1157 of Remington & Ballinger's Annotated Codes and Statutes of Washington, and adding a new section to be known as section 1157-a of Remington & Ballinger's Annotated Codes and Statutes of Washington. Approved March 10, 1917. Laws 17, p. 229.

Sections §9661-64 were amended under the above title and the following new section added.

**§9665c. Priority of Labor Over Material Liens—Personal Judgment—Deficiency.** §5. In every case originating in or removed to a court of competent jurisdiction, in which different liens are claimed against the same property, the court, in the judgment, must declare the rank of such lien or class of liens, which shall be in the following order:

1. All persons performing labor;
2. All persons furnishing material;

And the proceeds of the sale of the property must be applied to each lien or class of liens in the order of its rank; and personal judgment may be rendered in an action brought to foreclose a lien, against any party personally liable for any debt for which the lien is claimed, and if the lien be established, the judgment shall provide for the enforcement thereof upon the property liable as in case of foreclosure of mortgages; and the amount realized by such enforcement of the lien shall be credited upon the proper personal judgment, and the deficiency, if any, remaining unsatisfied, shall stand as a personal judgment, and may be collected by execution against the party liable therefor. The court may allow, as part of the costs of the action, the

moneys paid for filing or recording the claim, and a reasonable attorney's fee in the action.

Priority of wages to materials in chattel liens §9663.

## FARM.

**§9666. Laborer—Landlords Lien.** §1975. Any person who shall do labor upon any farm or land, in tilling same or in sowing or harvesting, or threshing any grain as laborer, contractor, or otherwise, or laboring upon, or securing or assisting in securing, or housing any crop or crops sown, raised or threshed thereon during the year in which said work or labor was done, such person shall have a lien upon all such crops as shall have been raised upon all or any of such land, for such work or labor, and every landlord shall have a lien upon the crops grown or growing upon the demised lands of any year for the rents accrued or accruing for such year, whether the same is paid wholly or in part, in money or specific articles of property, or products of the premises, or labor, and also for the faithful performance of the lease; and the lien created by the provisions of this act shall be a preferred lien and shall be prior to all other liens. L. '91 144.

Landlord consenting to sale of crop waives lien, *Banning v. Livesley* 87 W. 580.

Lien may be asserted for rental of both real and personal property—not all of leased property delivered—entry by third party does not avoid payment of rent.

*McLeod v. Russell* 59 W. 676.

If there is a confusion of price to be paid for both man and team it seems that there is lien for both, *Essency v. Essency* 10 W. 375.

Lienor's interest as principal and that payment has been made may be shown, *id.*

**§9667. Priorities.** §1976.—38. The liens provided for in this act are preferred liens, and are prior to any other lien or incumbrance upon said crop or crops, except that the interest of any lessors in any portion of the crops raised where the premises are leased in consideration of a share of the crop raised shall not be subject to such lien.

Lien expires if no action within eight months or as to any party not served within eight months, *Interior Warehouse Co. v. Hays* 91 W. 507.

sees" by Laws '83 p 45.

Lien is superior to prior chattel mortgage and is not an impairment thereof, *Setton v. Dubois* 14 W. 624; *Essency v. Essency* 10 W. 375.

Word "lessors" was substituted for "lessors"

**§9668. Filing of Claim.** §1977. Any person claiming the benefit of this chapter must, within forty days after the close of said work and labor, or after the expiration of the term, or after the expiration of each year of the lease, for which any lands were demised, file for record with the county auditor of the county in which said work and labor was performed, or said demised lands are situated, a claim which shall be in substance in accordance with the provisions of [§9685] section 1168, so far as the same may be applicable, which said claim shall be verified as in said section provided, and said liens may be enforced in a civil action in the same manner, as near as may be, as provided in [§9689] section 1172: Provided, that the lien hereby created in favor of landlords for rents shall apply when the lease has been recorded, and the recording of the lease shall dispense with the necessity of filing or recording any other notice or claim of lien for rents during the leasehold period. Any claim for damages to the landlord for failure of faithful performance of the lease must be filed and recorded at the time and in the manner heretofore specified. L. '19 ch. 176; R&B §1190.

Description of land and "certain crop" insufficient, *Northwestern Grain Co. v. Kerr Gifford Wareh. Co.* 76 W. 689.

*Dexter v. Olsen* 40 W. 199.

Lien may be filed at any time within the statute after accrual of the lien, *McLeod v. Russell* 59 W. 676.

Work will be presumed continuous, but must have terminated within forty days from filing notice, *Pain v. Issacs* 10 W. 173.

Lien notice indefinite and lien defeated,

Willful inclusion of non-lienable items will defeat lien—dismissal of action, *Robinson v. Brooks* 31 W. 60.

**AN ACT** relating to cultivating, pruning, spraying and caring for orchard and orchard lands, and granting a lien on such land for labor done in connection therewith, and providing for the enforcement thereof. Approved March 13, 1917. Laws '17. p. 410.



**§9672. Liens on Orchard Lands.** §1. Any person or corporation who shall do or cause to be done any labor upon any orchard or orchard lands, in pruning, spraying, cultivating and caring for the same, at the request of the owner thereof, or his agent, shall have a lien upon such orchard and orchard lands for such work and labor so performed.

**§9673. Filing Claims—Enforcement.** §2. Any person or corporation claiming the benefit of this chapter, must within 40 days after the close of such work or labor for each season during which such work and labor is done, file for record with the county auditor of the county in which said work and labor was performed and in which said land or part thereof is situated, a claim of lien which shall be in substance in accordance with the provisions of [§9710] section 1134 of Rem. & Bal. Code, so far as the same is applicable, which said claim of lien shall be verified as in said section provided, and such lien may be enforced in a civil action in the same manner as near as may be, as provided in [§9716] section 1140 of Rem. & Bal. Code.

**§9674. Limitation of Action—Costs and Attorney Fees.** §3. Any action to foreclose such claim of lien shall be brought within eight calendar months after the filing of such claim for lien as provided in section 2 hereof and in any such action brought to enforce such lien, the court shall allow as part of the costs the money paid for making, filing and recording such claim of lien and a reasonable attorney's fee.

## INN-KEEPERS.

**AN ACT for the protection of hotel, inn, lodging-house and boarding-house keepers.** Approved March 7, 1890. Laws '90 p 96.

**§9675. Inn-Keepers' Lien.** §1. That hereafter all hotel keepers, inn keepers, lodging-house keepers and boarding-house keepers in this state, shall have a lien upon the baggage, property or other valuables of their guests, lodgers or boarders, brought into such hotel, inn, lodging-house or boarding-house by such guests, lodgers or boarders, for the proper charges due from such guests, lodgers or boarders for their accommodation, board or lodging and such other extras as are furnished at their request, and shall have the right to retain in their possession such baggage, property or other valuables until such charges are fully paid, and to sell such baggage, property or other valuables for the payment of such charges in the manner provided in section two hereof.

Lien on property of guest, later act §2807. Lienable at common law, Wetholmer etc. Samples of salesman not lienable—when Co. v. Hotel Stevens Co. 38 W. 409.

**§9676. — Sale of Property.** §2. That whenever any baggage, property or other valuables, which have been retained by any hotel keeper, inn keeper, lodging-house keeper or boarding-house keeper in his possession by virtue of the provision of section one hereof, shall remain unredeemed for the period of three months after the same shall have been so retained, then it shall be lawful for such hotel keeper, inn keeper, lodging house keeper or boarding-house keeper to sell such baggage, property or other valuables at public auction, after giving the owner thereof ten days' notice of the time and place of such sale, through the post-office, or by advertising in some newspaper published in the county where such sale is made, or by posting notices in three conspicuous places in such county, and out of the proceeds of such sale to pay all legal charges due from the owner of such baggage, property or valuables, including proper charges for storage of the same, and the overplus, if any, shall be paid to the owner upon demand.

## LANDLORD.

Landlords lien on crops §9666.

**AN ACT providing for a lien for rent due and to become due, and for the enforcement thereof.** Approved March 17, 1917. Laws '17 p 769.

**§9677. Liens for Rent Due.** §1. Any person to whom rent may be due,

his executors, administrators, or assigns, shall have a lien for such rent which is paramount to, and has preference over, all other liens except liens for taxes, general and special liens of labor and mortgages or conditional bills of sale duly recorded prior to tenancy upon personal property of the tenant which has been used or kept on the rented premises, except property of third persons delivered to or left with the tenant for storage, repair, manufacture or sale, and such property exempt from execution by the laws of the State of Washington. Such liens shall not be for more than two months' rent due or to become due, nor for any rent or any installment thereof which has been due for more than two months; that no writing or recording shall be necessary to create such lien; and if such property be removed from the rented premises and not returned to the owner, agent, executor, administrator, or assign said lien shall continue and be a superior lien on the property so removed for ten days from the date of its removal, and said lien may be enforced against the property wherever found. In the event the property contained in the rented premises be destroyed by fire or other elements, the lien shall extend to any money that may be received by the tenant as indemnity for the destruction of said property, nor shall the lien be lost by the sale of the said property, except merchandise sold in the usual course of trade or to purchasers without notice of the tenancy. The provisions of this act shall not apply to, nor shall it be enforced against, the property of tenants in dwelling houses or apartments or any other place that is used exclusively as a home or residence of the tenant and his family.

**§9678. Enforcement.** §2. Said lien may be enforced in the same manner as the foreclosure of a chattel mortgage [§9749] in the superior court of the county in which the property or any portion thereof is situated.

### LOGGERS.

**Substitute—AN ACT** providing liens upon saw logs, spars, piles or other timber, and upon lumber and shingles, and concerning the remedy to secure and obtain such liens, and the benefit thereof, and the manner and procedure of obtaining the same. Approved March 15, 1893. General repeal. Laws '93 p 428.

**§9679. Loggers' Liens.** §1. Every person performing labor upon or who shall assist in obtaining or securing saw logs, spars, piles, cord wood, shingle bolts or other timber, and the owner or owners of any tugboat or towboat, which shall tow or assist in towing, from one place to another within this state, any saw logs, spars, piles, cord wood, shingle bolts or other timber, and the owner or owners of any team or any logging engine, which shall haul or assist in hauling from one place to another within this state, any saw logs, spars, piles, cord wood, shingle bolts or other timber, and the owner or owners of any logging or other railroad over which saw logs, spars, piles, cord wood, shingle bolts, or other timber shall be transported and delivered, shall have a lien upon the same for the work or labor done upon, or in obtaining or securing, or for services rendered in towing, transporting, hauling, or driving, the particular saw logs, spars, cord wood, shingle bolts, or other timber in said claim of lien described whether such work, labor or services was done, rendered or performed at the instance of the owner of the same or his agent. The cook in a logging camp shall be regarded as a person who assists in obtaining or securing the timber herein mentioned. L '07 14.

Right to declare lease of engine at an end if payment not made as logs rafted does not waive lien, Wroten v. Robbins 103 W. 393.

Foreclosure is not waiver of other cause of action arising from transaction, Gray v. Hickey 97 W. 278.

Logger's lien lost by laches in presenting checks, Hunt v. Panhandle Lum. Co., 66 W. 645.

Expressly allows a lien on logs for team

hire, Hunt v. Panhandle Lum. Co., 66 W. 645.

One who sells meals to employees and is paid by employer out of wages earned is not entitled to logger's lien as a "cook," Akers v. Lord, 67 W. 179.

Includes railroad ties, Forsberg v. Lundgren, 64 W. 427.

Cable, boom chains etc. not lienable items, Braeger v. Bolster 60 W. 579.



Guarantor of surety company has no lien though he has subsequent subcontract, *Todd v. Fransvog* 44 W. 520.

Materials confused lien fails, *Knudson-Jacob Co. v. Brandt* 44 W. 68.

Contractor may direct application of funds on making payment to material-man, relieve owner and avoid attorney's fees in foreclosure, *Hughes & Co. v. Flint* 61 W. 460.

Balcony floor held building not trade fixture, *Stetson & Post Lumber Co. v. Sloane Co.* 61 W. 180.

Lien against any logs for all services—party elotgning proper party—costs incidental to foreclosure not to be included in personal judgment, *Grimm v. Pacific Creosoting Co.* 50 W. 415.

Contractor with owner is his agent—lien for hauling, *O'Brien v. Perfection etc. Co.* 49 W. 395.

Contract giving time to cut logs and run them to market, leaving price for stumpage with the purchaser, held, not to waive lien, *Marls v. Clevenger*, 29 W. 395.

Person cutting logs is entitled to lien on manufactured product, *Robins v. Paulson* 30 W. 459.

Release of lien for most recent labor

releases all prior thereto, *Campbell v. Vincent* 8 W. 650.

Owner cannot defeat lien by confusion of logs, *Creighton v. Cole* 10 W. 472.

Logger agreed to wait for pay until employer had sold logs and thereby waived lien, *Anderson v. Tingley* 24 W. 537.

Part of lien claim under continuous employment waived, *Beal v. Nichols* 12 W. 157.

Change in management of mill does not affect lien if contract a continuing one, *Howey v. Bingham* 14 W. 450.

Proof must be made that work was done where notice was filed, *Garneau v. Port Blakeley Mill Co.* 8 W. 467.

Several liens assigned are valid though each lien may not cover all the logs if defendant interested in the logs, *McQuestin v. Morrill* 12 W. 335.

Lien can not be asserted for hauling completed fence posts *Ryan v. Guilford* 13 W. 373.

Person must perform labor himself, employer of others not entitled to lien, *Campbell v. Sterling Mfg. Co.* 11 W. 204.

When by agreement lienor does not work steadily the employment is held continuous and lien attaches, *Cross v. Dore* 20 W. 121.

**§9680. Lien on Manufactures from Timber. §2.** Every person performing work or labor or assisting in manufacturing saw logs and other timber into lumber and shingles has a lien upon such lumber while the same remains at the mill where it was manufactured, or in the possession or under the control of the manufacturer, whether such work or labor was done at the instance of the owner of such logs or his agent or any contractor or subcontractor of such owner. The term lumber, as used in this act shall be held and be construed to mean all logs or other timber sawed or split for use including beams, joists, planks, boards shingles, laths, staves, hoops and every article of whatsoever nature or description manufactured from saw logs or other timber.

Lumber sold and taken away before lien filed is not held, *Douglas v. Woodbury Lum. Co.* 101 W. 668.

Lumber sold but still "at the mill" is subject to lien—all lienors prior to vendee, *Vaughan v. Fifer* 91 W. 553.

Products delivered a mile away are not lienable, *Akers v. Lord*, 67 W. 179.

There can be no lien on railroad ties manufactured elsewhere than at a mill, nor after the removal of ties from the mill where manufactured, *Forsberg v. Lundgren*, 64 W. 427.

Contractors getting out logs, paid per thousand feet, have lien on product,

*O'Connor v. Burnham* 49 W. 443.

Shingle bolts are included, *Hadlock v. Shumway* 11 W. 690.

Shingle bolts are included, *Campbell v. Sterling Mfg. Co.* 11 W. 204.

Lien attaches though independent contractor intervenes between laborer and manufacturer, *Munroe v. Sedro Co.* 16 W. 694.

Lien will not attach if shingles have been put in cars and sealed and bill of lading surrendered, *Judge v. Bay Mill Co.* 18 W. 269, or beyond control as in *Swartwood v. Red Star Shingle Co.* 13 W. 349.

**§9681. Lien for Stumpage. §3.** Any person who shall permit, another to go upon his timber land and cut thereon saw logs, spars, piles or other timber, has a lien upon the same for the price agreed to be paid for such privilege, or for the price such privilege would be reasonably worth in case there was no express agreement fixing the price.

Labor prior to vendor retaining title on sale to bankrupt at stumpage rate, In re *Little Elk Logging Co.* 218 Fed. 142.

**§9682. Priorities. §4.** The liens provided for in this chapter are preferred liens and are prior to any other liens, and no sale or transfer of any saw logs, spars, piles or other timber or manufactured lumber or shingles shall divest the lien thereon as herein provided, and as between liens provided for in this act those for work and labor shall be preferred: Provided That as between liens for work and labor claimed by several laborers on the same logs or lot of logs the claim or claims for work or labor done or per-

formed on the identical logs proceeded against, to the extent that said logs can be identified, shall be preferred as against the general claim of lien for work and labor recognized and provided for in this act.

**§9683. Duration of Lien. §5.** The person rendering the service of [or] doing the work or labor named in sections 1 and 2 of this act, is only entitled to the liens as provided herein for services, work or labor for the period of eight calendar months, or any part thereof next preceding the filing of the claim, as provided in section 8 of this act.

Notice of claim must be filed to have action on bond, *Rodgers v. Fidelity & Dep. Co.* 89 W. 316.      Reduction of time relates to remedy and liens must be enforced in reasonable time, *McQuestin v. Morrill* 12 W. 335.

**§9684. For Stumpage. §6.** The person granting the privilege mentioned in section 3 of this act is only entitled to the lien as provided therein for saw logs, spars, piles and other timber cut during the eight months next preceding the filing of the claim, as herein provided in the next succeeding section of this act.

**§9685. Filing of Claim. §7.** Every person within thirty days after the close of the rendition of the services, or after the close of the work or labor mentioned in the preceding sections, claiming the benefit hereof, must file for record with the county auditor of the county in which such saw logs, spars, piles and other timber were cut, or in which such lumber or shingles were manufactured, a claim containing a statement of his demand and the amount thereof, after deducting as nearly as possible all just credits and offsets, with the name of the person by whom he was employed, with a statement of the terms and conditions of his contract, if any, and in case there is no express contract, the claim shall state what such service, work or labor is reasonably worth; and it shall also contain a description of the property to be charged with the lien sufficient for identification with reasonable certainty, which claim must be verified by the oath of himself or some other person to the effect that the affiant believes the same to be true, which claim shall be substantially, in the following form:

..... Claimant vs. ....

Notice is hereby given that ..... of ..... county, State of Washington, claims a lien upon a ..... of ..... being about ..... in quantity, which were cut or manufactured in ..... county, State of Washington; are marked thus ..... and are now lying in ..... for labor performed upon and assistance rendered in ..... said .....; that the name of the owner or reputed owner is .....; that ..... employed said ..... to perform such labor and render such assistance upon the following terms and conditions, to wit:

The said ..... agreed to pay the said ..... for such labor and assistance .....; that said contract has been faithfully performed and fully complied with on the part of said ....., who performed labor upon and assisted in ..... said ..... for the period of ..... that said labor and assistance were so performed and rendered upon said ..... between the ..... day of ..... and the ..... day of ..... and the rendition of said service was closed on the ..... day of ....., and thirty days have not elapsed since that time; that the amount of claimant's demand for said service is .....; that no part thereof has been paid except ....., and there is now due and remaining unpaid thereon, after deducting all just credits and offsets, the sum of ....., in which amount he claims a lien upon said ..... The said ..... also claims a lien on all said ..... now owned by said ..... of said county to secure payment for the work and labor performed in obtaining or securing the said logs, spars, piles or other timber, lumber or shingles herein described.

State of Washington, county of ..... ss.

..... being first duly sworn, on oath says that he is ..... named in the foregoing claim, has heard the same read, knows the contents thereof and believes the same to be true. ....

Subscribed and sworn to before me this ..... day of .....

.....



Demand before filing lien entitles claimant to costs, *Sumpter v. Burnham* 51 W. 599.

Cost of preparing lien notice chargeable as costs, *Creighton v. Cole* 10 W. 472.

Claim may be verified before foreign notary—work for three corporations in belief that work was done for one will not defeat—work in making of a public road is not lienable—inclusion of non-lienable items will not defeat, *Duggan v. Washougal L. & L. Co.* 10 W. 84.

Original notice is evidence — county auditor may take verification, *Garneau v. Port Blakely Mill Co.* 8 W. 467.

Notice need not declare that labor was done on all the logs—sufficiency of notice can not be raised first time on appeal—proof that notice was properly indexed is not essential, *McPherson v. Smith* 14 W. 226.

Slight variance as to price between notice and complaint is immaterial, *Marlette v. Crawford* 17 W. 603.

**§9686. — For Stumpage. §8.** Every person mentioned in section three of this act, claiming the benefit thereof, must file for record with the county auditor of the county in which such saw logs, spars, piles, or other timber were cut, a claim in substance the same as provided in the next preceding section of this act, and verified as therein provided.

**§9687. Record of Claims. §9.** The county auditor must record any claim filed under this act in a book kept by him for that purpose, which record must be indexed as deeds and other conveyances are required by law to be indexed, and for which he may receive the same fees as are allowed by law for recording deeds and other instruments.

**§9688. Length of Time Lien Binding. §10.** No lien provided for in this act binds any saw logs, spars, piles or other timber, or lumber and shingles, for a longer period than eight calendar months after the claim as herein provided has been filed, unless a civil action be commenced in a proper court, within that time, to enforce the same: Provided, however, That in case such civil action so commenced, should for any cause, other than the merits, be non-suited or dismissed, then the lien shall continue for the term of one calendar month, if the said eight months have expired, to permit the commencement of another action thereon, which shall be as effective in prolonging the lien as if it had been entered during the term of eight months hereinbefore stated.

*Co. v. Hays* 91 W. 507.

Farm lien expires if no action within eight months or as to any party not served within eight months, *Interior Warehouse*

Owner of logs necessary party defendant in foreclosure, *Duggan v. Smith* 27 W. 702.

**§9689. Enforcing Lien. §11.** The liens provided for in this act shall be enforced by a civil action in the superior court of the county wherein the lien was filed, and shall be governed by the laws regulating the proceedings in civil actions touching the mode and manner of trial, and the proceedings and laws to secure property so as to hold it for the satisfaction of any lien that be against it; except as hereinafter otherwise provided.

**§9690. Sheriff as Receiver. §12.** The sheriff of the county wherein the lien is filed shall be the receiver when one is appointed, and the superior court upon a showing made shall appoint such receiver without notice, who shall be allowed such fees as may seem just to the court, which fees shall be accounted for by such sheriff as other fees collected by him in his official capacity; Provided, That at any time when any property is in the custody of such sheriff under the provisions of this act, and any person claiming any interest therein, may deposit with the clerk of the court in which such action is pending, a sum of money in an amount equal to the claim sued upon, together with one hundred (\$100) dollars, to cover costs and interest, (unless the court shall make an order fixing a different amount to cover such costs and interest, then such an amount as the court shall fix to secure such costs and interest, which such action is being prosecuted) and shall have the right to demand and receive forthwith from such sheriff the possession and custody of such property: Provided, That in no action brought under the provisions of this act shall costs be allowed to lien holders unless a demand has been made for payment of his lien claim before commencement of suit unless the court shall find the claimants at time of bringing action had reasonable ground to believe that the owner or the person having control of the property upon which such lien is claimed was attempting to defraud such claimant, or prevent the collection of such lien. *1909* 143.

Sheriff can not be appointed receiver in insolvency, §1814.

Deposit for special purpose of satisfying liens is not subject to garnishment, *Beaston v. Portland Tr. & Sav. Bank* 89 W. 627.

There must be finding of demand or excuse or costs and attorney's fees can not be allowed, *Fraser v. Rutherford* 26 W. 658.

Supersedeas will not release logs from receiver's possession, *Anderson v. Tingley* 20 W. 592.

**§9691. Answer to Be on Merits.** §13. If the defendant or defendants appear in a suit to enforce any lien provided by this act he or they shall make their answer on the merits of the complaint, and any motion or demurrer against the said complaint must be filed with the answer; and no motion shall be allowed to make complaint more definite and certain, if it appear to the court that the defendant or defendants have or should have knowledge of the facts, or that it can be made more certain and definite by facts which will appear, necessarily, in the testimony; but the case, unless the court sustains the demurrer to the complaint shall be heard on the merits as speedily as possible, and amendments of the pleadings, if necessary, shall be liberally allowed.

**§9692. What Products Liable.** §14. Any person who shall bring a civil action to enforce the lien herein provided for, or any person having a lien as herein provided for, who shall be made a party to any such civil action, has the right to demand that such lien be enforced against the whole or any part of the saw logs, spars, piles, or other timber, or manufactured lumber or shingles upon which he has performed labor, or which he has assisted in securing or obtaining, or which he has cut on his timber

months next preceding the filing of his lien, for all his labor upon, or for all his assistance in obtaining or securing said logs, spars, piles or other timber, or in manufacturing said lumber or shingles during the whole or any part of the eight months mentioned in section seven (7) of this act, or for timber cut during the whole or any part of the eight months above mentioned. And where proceedings are commenced against any lot of saw logs, spars, piles or other timber or lumber, or shingles as herein provided, and some of the lienors claim liens against the specific logs, spars, piles or other timber or lumber or shingles proceeded against, and others against the same, generally, to secure their claims for work and labor, the priority of the liens shall be determined as hereinbefore provided.

Lienors prior to vendee of lumber still "at the mill," *Vaughan v. Fifer* 91 W. 553.

**§9693. Lien Shall Not Be Defeated.** §15. No mistake or error in the statement of the demand, or of the amount of credits and offsets allowed, or of the balance asserted to be due to claimant, nor in the description of the property against which the claim is filed, shall invalidate the lien, unless the court finds that such mistake or error in the statement of the demand, credits and offsets or of the balance due was made with intent to defraud, or the court shall find that an innocent third party, without notice, direct or constructive, has, since the claim was filed, become the bona fide owner of the property lienied upon, and that the notice of claim was so deficient that it did not put the party upon further inquiry, in any manner.

Notice of lien held good—part of logs manufactured, lien holds remainder—

money in lieu of logs may be held—personal judgment, *Grays Harbor Boom Co. v. Lytle Log etc. Co.* 36 W. 151.

Error in lien notice as to marks held immaterial where third parties had not intervened, *Marlette v. Crawford* 17 W.

603. Pleading quantity of logs indefinite and apparently inconsistent, held good, *Livingstone v. Lovgren* 27 W. 102.

Error in alleging lien notice as to time work done may be amended—inclusion of non-lienable item will not defeat lien, *Maris v. Clevenger* 29 W. 395.

**§9694. No Innocent Purchasers.** §16. It shall be conclusively presumed by the court that a party purchasing the property lienied upon within thirty days given herein to claimants wherein to file their liens, is not an innocent third party, nor that he has become a bona fide owner of the property lienied upon, unless it shall appear that he has paid full value for the said property, and has seen that the purchase money of the said property has been applied to the payment of such bona fide claims as are entitled to liens upon the said property under the provisions of this act, according to the priorities herein established.

*Berry Lum. Co.* 101 W. 668.

Lumber sold and taken away before liens filed is not held, *Douglas v. Wood-*

Liens not waived by agreement allowing manufacture, *Dubois Lumber Co. v. Diet-*



de-ich 97 W. 1.

Mortgage subject to farm lien—mortgagee liable to lienor, Hubbard v. Johnson 89 W. 310.

Purchaser within thirty days must see that price is applied to lien claims and he cannot with knowledge to put him on inquiry rely on errors of notice filed after

his purchase, Livingstone v. Lovgren 27 W. 102.

Requiring purchaser to apply price to liens is due process of law, McCoy v. Spithill 13 W. 158.

Purchaser paying claims cannot demand assignment, Ivall v. Willis 17 W. 645.

**§9695. Actions May Be Consolidated.** §17. Any number of persons claiming liens under this chapter may join in the affidavit in §5936 [§9685] provided, and may join in the same action, and when separate actions are commenced the court may consolidate them. The court shall also allow as part of the costs the moneys paid for filing, making and recording the claim, and a reasonable attorney's fee for each person claiming a lien.

Judgment should set out logs on which Port Blakeley Mill Co. 8 W. 467.

each recovery is had and attorney's fees Provision for attorney's fee is valid, may be allowed each claimant, Garneau v. Ivall v. Willis 17 W. 645.

**§9696. Judgment—Sale.** §18. In each civil action judgment must be rendered in favor of each person having a lien for the amount due to him, and the court or judge thereof shall order any property subject to the lien herein provided for, to be sold by the sheriff of the proper county in the same manner that personal property is sold on execution, and the court or judge shall apportion the proceeds of such sale to the payment of each judgment, according to the priorities established in this act, pro rata in its class, according to the amount of such judgment.

Personal judgment in case lien defeated —jury, Dolan v. Cain 59 W. 259.

**§9697. Manner of Sale.** §19. The court or judge may order any property subject to a lien as in this act provided to be sold by the sheriff as personal property is sold on execution, either before or at the time judgment is rendered, as provided in section next preceding and the proceeds of such sale must be paid into court, to be applied as in said section directed.

**§9698. Destroying Identity of Property.** §20. Any person who shall eloin, injure or destroy, or who shall render difficult, uncertain or impossible of identification any saw logs, spars, piles, shingles or other timber upon which there is a lien, as herein provided, without the express consent of the person entitled to such lien, shall be liable to the lien holder for the damages to the amount secured by his lien, and, it being shown to the court in the civil action to enforce said lien it shall be the duty of the court to enter a personal judgment for the amount in such action against the said person provided he be a party to such action or the damages may be recovered by a civil action against such person.

Purchaser taking lumber from mill before liens filed not liable, Douglas v. Woodberry Lum. Co. 101 W. 668.

Prior mortgagees of wheat ordered wheat to warehouse, sold it and indorsed negotiable bills, held liable to lienor, Hubbard v. Johnson 89 W. 310.

There can be no eloinment of logs prior to filing lien, Akers v. Lord, 67 W. 179.

Time checks of employer are evidence of amount due lienor, Garneau v. Port Blakely Mill Co. 8 W. 467.

Eloignment before taking effect of law is not affected by it—proof of value of logs must be made, Garneau v. Port Blakely Mill Co. 8 W. 467.

Party charged with eloinment entitled to jury trial, McCoy v. Spithill 13 W. 158.

Damages may be recovered in foreclosure or in separate action, Peterson v. Sayward 9 W. 503

If action is for damages jurisdictional amount must appear on appeal, Chapin v. Kenoyer 12 W. 536.

Action may be brought on implied contract and one partner served, judgment obtained and partnership property exhausted—proof of judgment on all of logs and sale of part is not proof of payment, Livingstone v. Lovgren 27 W. 104.

Injunction will lie if defendant insolvent, Cady v. Case 11 W. 124.

## MARITIME.

**AN ACT** relating to liens. Approved November 29, 1881. C81 §§1939-31.  
All former laws repealed and rights saved.

FORMER LAWS: Mechanics, '54 p 392; '57-8 p 29; '59-60 pp 285 340; '60-61 p 19; '62-3 p 418; '73 p 441; C81 §§1957-71; logs, C81 §§1941-56.

**§9699. Liens on Steamers.** §1939. That all steamers, vessels, and boats, their tackle, apparel and furniture are liable—

1. For service rendered on board at the request of, or under contract with their respective owners, charterers, masters, agents or consignees.

2. For work done or material furnished in this state for their construction, repair or equipment at the request of their respective owners, charterers, masters, agents, consignees, contractors, sub-contractors, or other person or persons having charge in whole or in part of their construction, alteration, repair or equipment; and every contractor, builder, or person having charge, either in whole or in part, of the construction, alteration, repair or equipment of any steamer, vessel or boat, shall be held to be the agent of the owner for the purposes of this chapter, and for supplies furnished in this state for their use, at the request of their respective owners, charterers, masters, agents or consignees, and any person having charge, either in whole or in part, of the purchasing of supplies for the use of any such steamer, vessel or boat, shall be held to be the agent of the owner for the purposes of this chapter.

3. For their wharfage and anchorage within this state.

4. For non-performance or mal-performance of any contract for the transportation of persons or property between places within this state, or to or from places within this state, made by their respective owners, masters, agents or consignees.

5. For injuries committed by them to persons or property within this state, or while transporting such persons or property to or from this state. Demands for these several causes constitute liens upon all steamers, vessels and boats, and their tackle, apparel and furniture, and have priority in the order of the sub-divisions hereinbefore enumerated, and have preference over all other demands; but such liens continue in force only for a period of three years from the time the cause of action accrued. L. '01 21.

Master has lien for wages, *The Edith* 217 Fed. 300.

Action against foreign owner and to foreclose mechanic's liens for construction of vessel sustained, *Siler Mill Co. v. Nelson Co.*, 94 W. 477.

But slight evidence to show credit given to vessel, *The Bainbridge* 210 Fed. 622; *The Alaskan* 227 Fed. 594.

*Callahan v. Aetna Indemnity Co.* affirmed, *McCreery v. Carter* 73 W. 394.

Recording or filing a lien claim is not necessary, *Hewitt-Lea Lumber Co. v. Chesley*, 68 W. 53.

Injury by ships to bridge remedy in state courts, *Martin v. West*, 222 U. S. 191.

Labor in installing gasoline engine for trial purposes not lienable—personal judgment, *Thompson v. Allen* 56 W. 582.

Injury by ships to bridge, remedy in admiralty only, *West v. Martin* 47 W. 417. Reversed on rehearing, 51 W. 85.

Conditional sale and failure to record does not affect lien—is not waiver—statute contemplates delivery of possession—no notice required, *Fairbanks Morse Co. v. Union Bank etc. Co.* 55 W. 538.

Sureties on bond substituted for vessel in receiver's charge on foreclosure of lien are parties to action—judgment, *Kalb-Gilbert Lum. Co. v. Cram* 57 W. 550; overruled id 60 W. 664.

Charter's contract of affreightment does not create lien, *Guffey v. Alaska & P. S. Co* 130 Fed. 271.

Lien for refusal to load cargo under sub. 4, *The Energia* 124 Fed. 842.

Lien attaches where material not sold on personal credit—confusion of agency, *Callahan v. Aetna Indem. Co.* 33 W. 583.

This section and §9703 invalid in part, *The Roanoke* 189 U. S. 185.

Statute giving liens notwithstanding payment to main contractor are valid as to future transactions, *Spokane etc. Lum-*

*ber Co. v. McChesney* 1 W. 609.

Law becomes a part of contract and liens are not affected by repeal of law; *Garneau v. Port Blakeley Mill Co.* 8 W. 467; but does not apply to procedure, *Hopkins v. Jamieson-Dixon Mill Co.* 11 W. 308.

Statute is valid though there is no provision for recording lien nor seizure of boats—is action in equity and receiver may be appointed, *Washington Iron Works v. Jensen* 3 W. 584.

Liens of this character are not recognized by U. S. admiralty law, id.

Sureties on bond for release of ship are not liable to intervenors subsequent to release there being no jurisdiction, *The Willamette (C. C. A.)* 70 Fed. Rep. 874.

Where credit is given domestic or foreign vessel the charterer is the owner for the purpose of charging vessel with liens which are given not as a burden on commerce but for the purpose of enabling credit to be obtained, *The Robert Dollar* 15 Fed. Rep. 218.

Where credit is given charterer in home port though vessel could have been charged, held, there was no lien and charterer rightfully interposed charter to keep vessel from liens as a defense, *Alaska & P. S. S. Co. v. Chamberlain & Co. (C. C. A.)* 116 Fed. Rep. 600.

Owners and charterers had office together and charter was to some extent joint venture, though charter provided that charterer should pay expenses, lien attaches for goods furnished without notice of the charter by order of master, *The North Pacific (C. C. A.)* 100 Fed. Rep. 490.

Lien attaches for credit given to ship in charge of person claiming to be part owner, *The South Portland (C. C. A.)* 100 Fed. Rep. 494.

After limitation has run and time of appeal in cause where ship was sold has



expired, lienor can not intervene though there are proceeds of sale in registry of the court, *The James G. Swan* 106 Fed. Rep. 94.

Is in aid of commerce because law enables vessels to obtain credit—lienor may have lien on vessels chartered, *The Del Norte* 90 Fed. Rep. 506.

Action and lien lies on both steamers for death by wrongful act as in collision, *The Premier* 59 Fed. Rep. 797; affirmed

(C. C. A.) 70 Id. 874.

Dredger is subject to maritime lien for services of all persons, though services not strictly nautical and for supplies as coal, *McRae v. Bower's Dredging Co.* 86 Fed. Rep. 344.

Tug is liable for damages for negligence for towing raft of logs and leaving of raft tied with one line to insecure stake in the beach is gross negligence, *The Wasp* 86 Fed. Rep. 470.

**Supplementary—AN ACT to create and provide means for the enforcement of a lien on steamers, vessels and boats in favor of stevedores or others engaged in stowing, loading or unloading of cargo or performing services connected therewith, in from, at or about steamers, vessels and boats.** Approved March 16, 1901. Laws '01 p 136.

**§9700. — Additional Liens. §1.** All steamers, vessels and boats, their tackle, apparel and furniture shall be held liable at all ports and places within this state or within the jurisdiction of the courts of this state or within the jurisdiction of the courts of the United States in said state for services rendered by stevedores, longshoremen or others engaged in the loading, unloading, stowing or dunnaging of cargo in or from any steamer, vessel or boat in any harbor or at any other place within said state, or within the jurisdiction of the courts thereof as above stated, and said steamers, vessels and boats shall further be liable as per their contracts for all services performed upon wharfs or landing places by stevedores, longshoremen or others; Provided, That such services must have been so performed in and about and be connected with the loading, unloading, dunnaging or stowing of said cargo.

**§9701. — Priority. §2.** Demands for wages and all sums due under contracts or otherwise for the performance of all or any of the services mentioned in the last preceding section shall constitute liens upon all steamers, vessels and boats, their tackle, apparel and furniture, and shall have priority over all other demands save and excepting the demands mentioned in the first three sub-divisions of section 5953 of Ballinger's Annotated Codes and Statutes of the State of Washington [§9699], to which said demands the lien hereby provided shall be subordinate; Provided, That such liens shall only continue in force for the period of three years from the date when such work was done or the last services performed by such stevedores, longshoremen or others.

**§9702. Practice. §3.** The liens hereby created may be enforced by a suit, in rem, and the law regulating like proceedings shall govern in all such suits.

**§9703. — Enforcement of. §1940.—2.** Such liens may be enforced, in all cases of maritime contracts or service, by a suit in admiralty, in rem, and the law regulating proceedings in admiralty shall govern in all such suits and in all cases of contracts or service not maritime, by a civil action in any superior court in this state.

Vessel injuring bridge is liable in state counter bond—measure of damages, West courts reversing 47 W. 417—receiver and *v. Martin* 51 W. 85.

**AN ACT creating a lien upon steamships, vessels and boats in favor of tug-boat companies, stevedores and others, and providing for the enforcement thereof.** No approval. Laws '03 p 286.

**§9704. Stevedores, Etc., Lien. §1.** Whenever the owner, charterer, or any person or corporation operating, managing or controlling any steamship, vessel or boat shall wilfully fail, neglect or refuse to carry out or perform any express contract or portion thereof for the towing, loading, unloading, dunnaging or stevedoring of such steamship, vessel or boat, any person or persons, firm or corporation sustaining thereby any loss or damage which is capable of definite ascertainment shall have a lien upon such steamship, vessel or boat for said loss or damage. The rank and priority of the lien hereby created and the manner of its enforcement shall be fixed, controlled and regulated by the provisions of the existing law pertaining to liens for similar services already performed.

**MECHANICS.**

Registered land, enforcement §5799.

Substitute—AN ACT creating and providing for the enforcement of liens for labor and material. Approved February 21, 1893. General repeal. Laws'93 p 32.

**§9705. Mechanics' Liens—Bond in Railroad Work.** §1. Every person performing labor upon or furnishing material to be used in the construction, alteration or repair of any mining claim, building, wharf, bridge, ditch, dyke, flume, tunnel, well, fence, machinery, railroad, street-railway, wagon road, aqueduct to create hydraulic power or any other structure or who performs labor in any mine or mining claim or stone quarry, has a lien upon the same for the labor performed or material furnished by each, respectively, whether performed or furnished at the instance of the owner of the property subject to the lien, or his agent; and every contractor, sub-contractor, architect, builder or person having charge of the construction, alteration or repair of any property subject to the lien as aforesaid, shall be held to be the agent of the owner for the purposes of the establishment of the lien created by this chapter: Provided, That whenever any railroad company shall contract with any person for the construction of its road, or any part thereof, such railroad company shall take from the person with whom such contract is made a good and sufficient bond, conditioned that such person shall pay all laborers, mechanics and material men, and persons who supply such contractors with provisions, all just dues to such persons or to any person to whom any part of such work is given, incurred in carrying on such work, which bond shall be filed by such railroad company in the office of the county auditor in each county in which any part of such work is situated. And if any such railroad company shall fail to take such bond, such railroad company shall be liable to the persons herein mentioned to the full extent of all such debts so contracted by such contractor. L '05 229.

Contractor doing work for lessee has no lien, *Prinz v. Second Street Theatre Co.* 98 W. 149.

Cartage and lumber for concrete forms lienable, *Stimson Mill Co. v. Feigenson Eng. Co.* 100 W. 172.

No liability until bond filed—filing lien unnecessary, *Clarke v. Murphy* 99 W. 643.

Failure to take bond railroad liable in personam for sub-contractor, only when lien filed—oral promise not binding—no recovery for equitable benefit, *Dixon v. Parker, Moran & Parker* 102 W. 101.

Lien rejected for willful excessive claim, *Knibb v. Mortensen* 89 W. 595.

Contract substantially performed—quantum meruit for extras, *Evans v. Goist* 90 W. 100.

Lessee of mine with option to purchase held agent of owner—owner's disclaimer notice on property, *Dahlman v. Thomas* 88 W. 653.

Bond is not common law obligation, remedy only as statute provides, *Du Pont, etc., Powder Co. v. National Surety Co.* 90 W. 227, 94 id. 461.

Materials, laborers on not entitled to lien—subrogation, *Baker v. Yakima Val. Canal Co.*, 77 W. 70.

Promoter agreed to pay lienors stock for services defeating lien—bank held title to property to secure debt, held prior lienor, *Lipscomb v. Exchange National Bank* 80 W. 296.

Architect has lien for plans and superintendence, *Gould v. McCormick* 75 W. 61.

Subcontractor working by the day with dredger has lien—priority—may name voluntary association in lien notice, *Gravelle v. Island Gun Club* 77 W. 304.

Bankruptcy sale divests lien, *Shinn v. Kemp & Herbert* 73 W. 254.

Defective plans by owner's architect does not defeat lien, *Ward v. Pantages*, 73 W. 208.

Nonlienable item included in action between subcontractors contractor cannot complain though liable, *Maher & Co. v. Fernandis*, 70 W. 250.

Lienor confused material used in a fifth house in which defendant had no interest and lost lien, *Sarginson v. Turner Inv. Co.*, 69 W. 234.

Substantial performance of contract shown and lien sustained, *Belknap Glass Co. v. Brown*, 69 W. 127.

Mistake making excessive charge which was conceded will not defeat lien, *Hillman v. Donaldson*, 67 W. 410.

Reliance on credit of another does not waive lien—confusion of material does not defeat lien, *Smith v. Hopper*, 67 W. 224.

Release by lien claimant without consideration void if vendee of land did not rely on release, *Seattle Lumber Co. v. Cutler*, 63 W. 662.

Subcontractors furnishing material and doing work are entitled to a lien for labor, although they lost their lien for materials through failure to deliver duplicate statements, *Helm v. Elliott*, 66 W. 361.

Complaint must allege that work was furnished at instance of owner or contractor, etc., *Belknap Glass Co. c. Kelleher*, 72 W. 529.

Labor in removing debris from a lot prior to the erection of a building is not lienable, although provision for such work is included in the building contract, *Sound Transfer Co. v. Phinney R. & I. Co.*, 71 W. 473.



Boiler, radiators etc., for heating lienable items, *American Radiator Co. v. Pendleton*, 62 W. 56.

Materialman is not a subcontractor—attempt to substitute credit of owner, *Finlay v. Tagholm*, 62 W. 341.

Construction of contract by owner and power to condemn work—notice to contractor, *Sweatt v. Hunt* 42 W. 96.

Attorney's fee fixed by trial court additional fee not allowed in supreme court, *Sweatt v. Hunt* 42 W. 96.

Substantial performance of contract held sufficient, *Sweatt v. Hunt* 42 W. 96.

Tools and appliances not chargeable items—nonlienable items included lien fails, *Gilbert Hunt Co. v. Parry* 59 W. 646.

Supplies not lienable—recovery against contractor, *Tsutakawa v. Kumamoto* 53 W. 231.

Waiver must be shown clearly—evidence of delivery, *Pacific Lumber etc. Co. v. Dailey* 60 W. 566.

Lumber confused in two houses lien fails *Little Bros. v. Baker* 57 W. 311.

Non-lienable items included did not defeat lien, *Bellingham v. Linck* 53 W. 208.

Railroad company can not be charged for failure to file bond—lien must be perfected, *Laidlaw v. Portland etc. R. Co.* 42 W. 292.

Agreement that each of two persons should pay one-half of lumber bill each cannot be charged for all, *Argo Mfg. Co. v. Parker* 52 W. 100.

Leasehold lienable for clearing land, *Owen v. Casey* 48 W. 673.

Contractor does not waive own lien by agreeing to protect against others, *Holm v. Chicago M. & P. S. R. Co.* 59 W. 293.

Lien for other than contract materials ordered by architect—contractor's option on materials in contract, *Camp v. Neufelder* 49 W. 426.

Laborer furnished material by having it charged to his wages and gave defendant \$60 to be applied on lumber bills, receiving some credit by defendant on account of board bills, *Popiella v. Zolawenski* 51 W. 39.

Defeated because corporation recently organized of same name was not made defendant—action after eight months, *Rees v. Wilson* 50 W. 339.

Must be shown that material was used or delivered, *Fuller & Co. v. Ryan* 44 W. 385.

Contract price lienable though part superintendence and profits, *Smyth v. Lance & Peters* 52 W. 560.

Leasehold forfeited before sale lienor of lessee takes nothing, *Stetson etc. Mill Co. v. Pacific Amusement Co.* 37 W. 335.

Lien may be claimed for material on the ground—lienor estopped from claiming material not in lien, *Potvin v. Denny Hotel Co.* 37 W. 323.

Contractor giving bond and agreeing with surety company to prevent liens cannot claim lien, *Kent Lumber Co. v. Ward* 37 W. 60.

Title is not broad enough to cover "provisions"—surety on bond not liable to party furnishing provisions because of want of privity, *Armour & Co. v. Western Construction Co.* 36 W. 529.

Work done at instance of an agent of

an agent of the owner is not lienable, *Northwest Bridge Co. v. Tacoma Shipbuilding Co.* 36 W. 333.

Two of three contractors proceeded with the work owner paying them—contractors ejected—notice by owner to continue—damages, *Cochran v. Yoho* 34 W. 238.

Architect being co-partner with owner selling his interest cannot claim lien for balance due—architect accounting to his firm cannot shift credit from lienable to nonlienable items, *Spalding v. Burke* 33 W. 679.

Owner accepted offer with charge for extras of mill company for definite amount to include "all materials," held extras could not be recovered, *Littell v. Saulsberry*, 40 W. 550.

Building ordered by lessee if lease in effect a building contract the owner is chargeable, *Kremer v. Walton* 16 W. 139. If lessee "may" build only interest of lessee is chargeable, *Stetson-Post Mill Co. v. Brown* 21 W. 619. Requiring notice of owner is repealed, *id.*

Group of mining claims operated as one may all be properly included in lien, *Sly v. Mining Co.* 28 W. 485.

Where owner accepts materials requirement of contract that it is to be to his satisfaction, is complied with—if owner has power to fix damages with right of contractor to dissent and have arbitration, in absence of arbitration owner may fix and set off damages, *Childs Lumber & Mfg. Co. v. Page* 28 W. 128.

Plaintiff pleaded, but not fully, legal effect of contract, defendant pleaded contract in haec verba which showed facts to defeat plaintiff reply confessed and avoided, held, not a departure, *Childs Lumber & Mfg. Co. v. Page* 28 W. 128.

Lienor must deliver materials on the credit of the building, *Whittler v. Puget Sound L. & G. Co.* 4 W. 666.

When lien may be claimed on homestead, *Parsons v. Pearson* 9 W. 48.

Lien cannot be had for materials sold to contractor and used in several buildings, *Eisenbeis v. Wakeman* 3 W. 534.

Work done on credit of contractor when contractor not agent of owner is not lienable, *Heald v. Hodder* 5 W. 677.

Where materials specially designed lien may be had for all though not used—cessation of work—priority of mortgage, *Huttig v. Denny Hotel Co.* 6 W. 122.

Surety on contractor's bond cannot file lien, *Morse v. Mansfield* 10 W. 373.

One falsely representing himself as the lessee cannot charge fee and landlord saying he would see that lessee paid or his purchase of the improvements from lessee will not charge fee with lien, *Moscow v. Fife* 10 W. 528.

Where arbitration before lien is provided lien may be filed when award objected to though not set aside, *McDonald v. Lewis* 18 W. 300.

Giving of lien does not oust title in owner of property to subject it to levy of writ against him, *Potvin v. Wickersham* 15 W. 646.

Owner became insolvent and contract was abandoned by mutual consent, owner sold to party with notice, held, that contractor was not bound to complete build-

ing—recovery on contract by lienor—claim of interest in lien notice *Huetter v. Redhead* 31 W. 320.

Averment by material man of contract between owner and contractor that he sold to contractor and materials were actually used is sufficient, *Griffith v. Maxwell* 20 W. 403.

Mechanic may recover though employees worked on material, *Hopkins v. Jameson-Dixon Mill Co.* 11 W. 308.

Contractor has lien for purchase of material furnished by material man though time has expired when contractor had requested owner to pay him out of balance due him—release of lien on one of four houses built under one contract will not release him on the others, *Powell v. Nolan*

27 W. 318.

Contract at certain price for finishing cut by "stakes set by engineer and to his satisfaction" refers to those set at time contract was made—lien not defeated because ditch along roadbed not cut when engineer refused to furnish levels, *Olson v. Snake River R. R. Co.* 22 W. 139.

Lien created only by "person having charge" and does not include contractor, subcontractor not in charge, *Pacific Rolling Mill Co. v. Hamilton* 61 Fed. Rep. 476; affirmed (C. C. A.) 68 id 966.

Lien cannot be had on structure of street railways on streets nor can lien be shifted to power house, *Pacific Rolling Mills v. James Street Const. Co.* (C. C. A.) 68 Fed. Rep. 966.

**AN ACT relating to materialmen's liens, and the enforcement thereof.** Approved March 4, 1909. Laws '09 p 71.

**§9706. Notice of Materials.** §1. Every person, firm or corporation furnishing materials or supplies to be used in the construction, alteration or repair of any mining claim, building, wharf, bridge, ditch, dyke, flume, tunnel, well, fence, machinery, railroad, street railway, wagon road, aqueduct to create hydraulic power, or any other building, or any other structure, or mining claim or stone quarry, shall, not later than five (5) days after the date of the first delivery of such materials or supplies to any contractor or agent, deliver or mail to the owner or the reputed owner of the property on, upon or about which such materials or supplies are to be used, a notice in writing, stating in substance and effect that such person, firm or corporation has commenced to deliver materials and supplies for use thereon, with the name of the contractor or agent ordering the same, and that a lien may be claimed for all materials and supplies furnished by such person, firm or corporation for use thereon; and no further notice to the owner shall be necessary. No materialmen's lien shall be enforced unless the provisions of this act have been complied with. L '11 376.

Notice to owner's general agent good. *Spokane Val. Lum. & Box. Co. v. Dawson* 94 W. 246.

Notice not necessary to owners of boats, *Siler Mill Co. v. Nelson Co.* 94 W. 477.

Act not retroactive—notice prior to law of no effect, *Walker v. Lanning* 74 W. 253.

"Agent" means agent of the owner—lessee obligated to make improvements is agent of the owner, *Hays v. Montesano Mill Co.* 85 W. 604.

Mailing with street address in doubt good, *Hillyard Lum. Co. v. Codd* 85 W. 612.

Notice "complying with lien laws" sufficient, *Ehrlich-Harrison Co. v. Cushman* 86 W. 190.

Notice incorrectly addressed but delivered, good—description without city good—no notice if owner ordered material—third party cannot give notice, *Brace & Hergert Mill Co. v. Burbank* 87 W. 356.

Diligence required in reaching owner, *Seattle Lum. Co. v. Richardson & Elmer Co.* 66 W. 671.

Actual notice or refusal of owner to sign delivery receipt will not satisfy statute, *Johnson v. Heirgood*, 72 W.

Fact that owner was working on house does not dispense with statements, *Culbert v. Lindvall*, 73 or 74 W.

Subcontractor must give owner duplicate statements, *Hallett v. Phillips*, 73 W.

Did not repeal §§9699, 9703, *Hewitt-Lea Lumber Co. v. Chesley* 68 W. 53.

Has no application to a lien claimed by a contractor furnishing both labor and materials for plaster work under a contract

with the owner, nor to materials furnished direct to the owner and under a contract made by the owner's agent. *Architectural Co. v. Nicklason*, 66 W. 198.

A materialman who delivers materials to an owner under contract with him need not deliver statements. *Hewitt-Lea Lumber Co. v. Chesley*, 68 W. 53.

Does not apply to materials delivered to the owner, *Rieslin v. Grafton*, 63 W. 387.

Delivery of duplicate statement to contractor cannot be construed as delivery thereof to the owner, *Seattle Lum. Co. v. Richardson & E. Co.*, 66 W. 671.

Failure to send owner duplicate statements bars right to lien, *Hewitt Lea Lum. Co. v. Sandell*, 66 W. 515.

Is not complied with by delivering with the first load one duplicate statement of all material to be furnished, *Heim v. Elliot*, 66 W. 361.

A sub-contractor will not be denied a lien where sub-contract has become in effect a contract with the owner, *Ringel v. Newman*, 69 W. 583.

The statement need not specify the price or prices, *Ringel v. Newman*, 69 W. 583.

One statement to owner when last of materials furnished insufficient—actual notice does not excuse—materialman not a subcontractor, *Finlay v. Tagholm*, 62 W. 341.

Act valid being complete in itself, *Spokane Grain etc. Co. v. Lyttaker* 59 W. 76.

Mailing of statements has no application to §9727, *Gate City Lum. Co. v. Montesano* 60 W. 586.



Duplicate statement mailed afterward insufficient, *Finlay v. Tagholm* 60 W. 539.

Lessor estopped under the facts—personal liability, *Shaw v. Spencer* 57 W. 587.

Architect with powers held not agent of owner dispensing with notice, *Stimson Mill Co. v. Feigenson Eng. Co.* 100 W. 172.

**§9707. Land Subject to Lien. §2.** The lot, tract or parcel of land upon which the improvement is made or the property is situated, subject to the lien created by Section 1 of this act, or so much thereof as may be necessary to satisfy the lien and the judgment thereon, to be determined by the court on rendering judgment in a foreclosure of the lien, is also subject to the lien to the extent of the interest of the person or company, who, in his or its own behalf, or who, through any of the persons designated in Section 1 to be agent of the owner or owners, caused the performance of the labor, or the construction, alteration or repair of the property. L '05 229.

Owner posting notice does not relieve his property of liens by his agent, *Dahlman v. Thomas* 88 W. 653.

Lien attaches to interest of vendor and vendee, vendor contracting and vendee agreed to construct building, *Adams v. Dose* 87 W. 575.

Cited 80 W. 296.

Owner's interest subject to lien for improvements ordered by lessee when notice not given—owner's contract with lessee to repair, *Housekeeper v. Livingstone* 48 W. 209.

Vendee forfeiting interest under contract lienor can foreclose only on vendee's interest, *Northwest Bridge Co. v. Tacoma Shipbuilding Co.* 36 W. 323.

Party holding contract for land can charge only his interest therein with lien *Mentzer v. Peters* 6 W. 540.

Work for person holding contract of sale

lien attaches only to his interest, *Hill v. Forssell* 7 W. 225.

Lien binds only leasehold when improvement is for lessee *Miles Co. v. Gordon* 8 W. 442.

Sub-contractor may recover under agreement with contractor, *Spears v. Lawrence* 10 W. 368.

Lien cannot be enforced against part of a building, *Wright v. Corvie* 5 W. 341.

If lessee authorized to repair lien attaches to interest of lessor, *Sheehan v. Winchell* 18 W. 447.

Proof showed part of lien to be on house connected, held not a variance, *Peterman v. Milwaukee Brg. Co.* 11 W. 199.

Building by lessee to be paid for by retention of rents renders lessor's interest liable, *Kremer v. Walton* 11 W. 120.

Only interest of person erecting building can be sold to satisfy lien, *Baker v. Sinclair* 22 W. 462.

**§9708. Lien for Work on Premises. §3.** Any person who, at the request of the owner of any real property, his agent, contractor, or subcontractor, clears, grades, fills in, or otherwise improves the same, or any street or road in front of, or adjoining the same, has a lien upon such real property for the labor performed, or the materials furnished for such purposes.

Lien does not attach to portable machinery not belonging to employer, *Mattocks v. Great Nor. R. Co.*, 94 W. 44.

Refrigerating plant defective, but part used, judgment for part used, *United Iron Works v. Hosea* 81 W. 234.

Labor in cultivating orchard not lienable, *Howe v. Myers* 94 W. 563.

Surety bond against liens liable for street and road work—time of action limited in bond waived, *Williams v. Pacific Coast Casualty Co.*, 79 W. 164.

Surveyor not entitled to lien, *Daugherty v. Gunther* 88 W. 378.

Rental of scrapers not lienable, *Hall v. Cowen* 51 W. 295.

Contractor clearing land has lien though unmindful of it at time of contract—payment in specific chattels and demand for same by contractor before action—parol evidence to show quality of chattels, *Stringham v. Davis* 23 W. 568.

Lien under this section is due process of law—change in wording of contract of co-improvers of street held not an alteration—payment of more than due by one will not inure to another, *Young v. Borzone* 26 W. 4.

**§9709. Priorities. §4.** The liens created by this act are preferred to any lien, mortgage, or other incumbrance which may attach subsequently to the time of the commencement of the performance of the labor, or the furnishing of the materials for which the right of lien is given by this act, and are also preferred to any lien, mortgage or other incumbrance which may have attached previously to that time, and which was not filed or recorded so as to create constructive notice of the same prior to that time, and of which the lien claimant had no notice.

Lien prior to mortgage misdescribing property, *Zurfluh v. Hartman* 103 W. 452.

Representation of agent of mortgagee that he had money to pay liens made mortgage inferior, *Schweitzer v. Equitable S. & L. Ass'n* 98 W. 139.

Contractor's lien inferior to mortgage he knew would be made on property, *Jahn & Co. v. Mortgage Tr. & Sav. Bank* 97 W. 504.

Section applied as it reads, *Cutler v. Keller* 88 W. 334.

Labor lien prior to record belated chattel mortgage, *Olsen v. Smith* 84 W. 228.

Cessation of work does not defeat lien. *Bradley v. Donovan-Pattison Realty Co.* 84 W. 654.

Lien attaches on performance, not on date of contract, *Keene Guar. Svgs. Bank v. Lawrence* 32 W. 572.

Appellant cannot complain of award in

priority if there are other claims prior to appellant to more than exhaust fund, *Munroe v. Sedro Lumber & Shingle Co.* 16 W. 695.

Liens for material furnished party in possession with unrecorded executory contract to purchase are superior to rights of vendor with record title and right of forfeiture under the executory contract, *Bell*

*v. Swaldell Land etc. Co.* 20 W. 602.

Priority dates from beginning of service or materials furnished and contract is continuous though payments to be made monthly, *Nason v. Northwestern Co.* 17 W. 142.

With the legal title in the vendor of land only interest of vendee can be sold to satisfy liens contracted by vendee, *Baker v. Sinclair* 22 W. 462.

§9710. Filing of Claim. §5. No lien created by this act shall exist, and no action to enforce the same shall be maintained, unless within ninety days from the date of the cessation of the performance of such labor or of the furnishing of such materials, a claim for such lien shall be filed for record as hereinafter provided, in the office of the county auditor of the county in which the property or some part thereof to be affected thereby is situated. Such claim shall state, as nearly as may be, the time of the commencement and cessation of performing the labor or furnishing the material, the name of the person who performed the labor, or furnished the material, the name of the person by whom the laborer was employed (if known), or to whom the material was furnished, a description of the property to be charged with the lien sufficient for identification, the name of the owner, or reputed owner if known, and if not known, that fact shall be mentioned, the amount for which the lien is claimed, and shall be signed by the claimant or by some person in his behalf and be verified by the oath of the claimant or some person in his behalf to the effect that the affiant believes the claim to be just; in case the claim shall have been assigned the name of the assignee shall be stated; and such claim of lien may be amended in case of action brought to foreclose the same, by order of the court as pleadings may be, in so far as the interests of third parties shall not be affected by such amendment. A claim for lien substantially in the following form shall be sufficient:

....., claimant, vs. ....

Notice is hereby given that on the .... day (date of commencement of performing labor or furnishing material) ..... at the request of ..... commenced to perform labor (or to furnish material to be used) upon ..... (here describe property subject to the lien) of which property the owner, or reputed owner, is ..... (or if the owner or reputed owner is not known, insert the word "unknown") the performance of which labor (or the furnishing of which material) ceased on the .... day of .....; that said labor performed (or material furnished) was of the value of ..... dollars, for which labor (or material) the undersigned claims a lien upon the property herein described for the sum of ..... dollars. (In case the claim has been assigned, add the words "and ..... is assignee of said claim," or claims, if several are united.)

....., Claimant.

State of Washington, County of ....., ss.

....., being sworn says: I am the claimant (or attorney of the claimant) above named; I have heard the foregoing claim read and know the contents thereof, and believe the same to be just. ....

Subscribed and sworn to before me this ..... day of .....

Any number of claimants may join in the same claim for the purpose of filing the same and enforcing their liens, but in such case the amount claimed by each original lienor, respectively, shall be stated: Provided, It shall not be necessary to insert in the notice of claim of lien provided for by this act any itemized statement or bill of particulars of such claim

Notice necessary to bind owner when no bond taken, *Dixon v. Parker, Moran & Parker* 102 W. 101.

Signature of claimant after attorney's good—description amended—cartage—interest, *Brace & Hergert Mill Co. v. Burbank* 87 W. 356.

Voluntary association sufficient defendant in lien notice, *Chavelle v. Island Gun Club* 77 W. 304.

Lien notice describing three noncontigu-

ous tracts without locating building void, *Farrington v. Bushnell* 88 W. 155.

No lien notice, no recovery on bond by railroad, *Du Pont, etc., Powder Co. v. National Surety Co.*, 90 W. 227.

Amendments to notice should be allowed if defendant not prejudiced, *Phelps Lum. Co. v. McDonough Mfg. Co.* 202 Fed. 445.

Wilful inclusion of nonlienable items will defeat lien—dismissal, *Robinson v. Brooks* 31 W. 60; excessive claim will not.



Gould v. McCormick 75 W. 61.

The date on which defective material is replaced on demand of the owner is the date of "cessation of furnishing," Rieflin v. Grafton, 63 W. 387.

Successive notices may be filed and time for action runs from last notice, Lindley v. McGlauffin 58 W. 636.

Amendment allowed to describe leasehold only—building or trade fixture—variance, Stetson & Post Lum. Co. v. Sloane Co. 61 W. 180.

Amended notice filed without leave treated as original notice and held insufficient, Brown v. Trimble 48 W. 270.

Notice may be amended to correct description of property. Malfa v. Crisp 42 W. 509.

Terms of contract need not be stated, Seattle Lumber Co. v. Sweeney 33 W. 691.

Computation of time—error in date, Seattle Lumber Co. v. Sweeney 33 W. 691.

Notice stated ownership at time materials furnished and will be presumed the same when notice filed, Seattle Lumber Co. v. Sweeney 33 W. 691.

Work in the nature of repairs do not extend date of lien, Ellsworth v. Layton 37 W. 340.

Notice of lien on property of one spouse need not name the other, Parsons v. Pearson 9 W. 48.

The holder of a deed which is in fact a mortgage is the "owner or reputed owner" in mechanics' lien law, Harrington v. Miller 4 W. 808.

Wife is necessary party to lien notice, Saegmeister v. Foss 4 W. 320.

Lessee is necessary party to notice against landlord, Wright v. Cowie 5 W. 341.

Omission of notary's seal on jurat is fatal Stetson & Post Mill Co. v. McDonald 5 W. 496.

Misdescription of land defeated lien, Mount Tacoma Mfg. Co. v. Cultum 5 W. 294.

Notice prematurely filed second notice may be filed—attorney may verify for foreign corporation, Huttig Bros. v. Denny Hotel Co. 6 W. 122.

Facts going to defense as failure to deliver in time should not be stated in lien notice, Washington Mill Co. v. Craig 7 W. 556.

Notice on railroad work must state that railroad has interest in land, Vincent v. Snoqualmie Mill Co. 7 W. 566.

If no price agreed on reasonable value may be collected, Washington Rock etc. Co. v. Johnson 10 W. 445.

§9711. Record of Claims. §6. The county auditor must record the claims mentioned in this act, in a book to be kept by him for that purpose, which record must be indexed as deeds and other conveyances are required by law to be indexed.

§9712. Assignment of Claim. §7. Any lien or right of lien created by law and the right of action to recover therefor, shall be assignable so as to vest in the assignee all rights and remedies of the assignor, subject to all defenses thereto that might be made if such assignment had not been made.

Indorsement of pay check does not operate as assignment of claim, National Market Co. v. Maryland Cas. Co. 100 W. 370.

Contract is assignable though blank is that used by city and contains provision

Lien notice held not stating terms of contract—labor and materials must be segregated, United States Svgs. etc. Co. v. Jones 9 W. 434.

Proof of filing is sufficient without proof of recording—terms of contract—failure to include wife's name—inclusion of items not furnished will not vitiate, Bolster v. Stocks 13 W. 460.

Notice indefinite and with verbal variances held good, Sautter v. McDonald 12 W. 27.

Lien runs from time material furnished rather than time of engineer's certificate when required before payment, Washington Bridge Co. v. Land and R. Imp. Co. 12 W. 272.

Notice stating substance of contract is good though it refers to plans, Mras v. Duff 11 W. 36.

Inclusion of items not furnished will not defeat lien, Peterman v. Milwaukee Brg. Co. 11 W. 199.

Neither misdescription of property nor mistake as to legal or equitable title to property nor as to whether person is contractor or sub-contractor will not invalidate, McHugh v. Black 11 W. 370.

Notice with husband as reputed owner binds community, Douthitt v. MacCulsky 11 W. 601.

Where notice and complaint describe same lot but differ as to the street number of the house variance is not fatal—word "seal" written after notary's name in copy imports seal to original, Griffith v. Maxwell 20 W. 403.

Any number of claimants doing work on same building may join in notice—proper designation of employer and owner—need not state terms of contract in notice, Hopkins v. Jamieson-Dixon Mill Co. 11 W. 308.

Inclusion of items not lienable if separable will not vitiate lien and personal judgment may be had for such items—failure to include husband's name as reputed owner is not fatal—auditor's certificate and proof of lienor's signature will admit notice in evidence, Powell v. Nolan 27 W. 318.

Notice that labor performed at "request" of another is sufficient, Young v. Borzone 26 W. 4.

Supreme court will treat defective notice as defective pleading and insufficiency not pointed out to trial court will consider it amended where no one will be injured, Olson v. Snake River R. R. Co. 22 W. 139.

Failure to state terms of building contract is not a defect in notice Greene v. Finnell 22 W. 186.

against assignment, Young v. Borzone 26 W. 4.

Lienor may assign as collateral security, Potvin v. Denny Hotel Co. 9 W. 316.

**§9713. Separate Claim for Each Building.** §8. In every case in which one claim is filed against two or more separate pieces of property, owned by the same person, or owned by two or more persons who jointly contracted for the labor, or material for which the lien is claimed, the person filing such claim must designate in the claim the amount due him on each piece of property, otherwise the lien of such claim is postponed to other liens. The lien of such claim does not extend beyond the amount designated as against other creditors having liens upon either of such pieces of property.

Failure to specify separate buildings house if lot not divided—amendment may postpone lien after those specified, *Seattle Lumber Co. v. Sweeney* 33 W. 691. be made as to third party intervening after filing notice, *Cullivan v. Treen* 13 W. 261.

Several liens may be filed on houses on same lot claiming on all of lot for each legation of amount due on each house is sufficient, *Powell v. Nolan* 27 W. 318.

**§9714. Duration of Lien.** §9. No lien created by this act binds the property subject to the lien for a longer period than eight calendar months after the claim has been filed unless an action be commenced in the proper court within that time to enforce such lien; or if credit be given, then eight calendar months after the expiration of such credit; and in case such action be not prosecuted to judgment within two years after the commencement thereof, the court in its discretion may dismiss the same for want of prosecution, and the dismissal of such action, or a judgment rendered therein, that no lien exists, shall constitute a cancellation of the lien.

Duration of lien limited—bankruptcy does not toll statute, *McDermott v. Tolt Land Co.* 101 W. 114. *Mahon* 42 W. 452.

Eight months not limitation but life of lien and service must be had—general statute on service does not aid—cross-complaint does not aid, *City Sash & Door Co. v. Bunn* 90 W. 669. Party cannot be brought into action after time has expired, *Northwest Bridge Co. v. Tacoma Shipbuilding Co.* 36 W. 333.

The lien expires as to a mortgagee although suit was commenced against the owner within time, where the mortgagee was not made a party, *Davis v. Bartz*, 65 W. 395. It must be affirmatively shown that action is brought in time and objection may be made in first instance on appeal—if wife not a party in foreclosure within time personal judgment may be had, but no lien, *Peterson v. Dillon* 27 W. 79.

Time of action runs from last notice filed, *Lindley v. McGlauffin* 58 W. 636. Assignee of claim after action begun has one year to file supplemental pleading—action to foreclose on community must be in time against both spouses, *Powell v. Nolan* 27 W. 318.

Complaint must be filed within eight months—personal judgment, *Service v. Mc-* Cited 91 W. 507.

**§9715. Rights of Owner and Contractor.** §10. The contractor shall be entitled to recover upon the claim filed by him only such amount as may be due him according to the terms of his contract, after deducting all claims of other parties for labor performed and materials furnished; and in all cases where a claim shall be filed under this act for labor performed or materials furnished to any contractor, he shall defend any action brought thereupon at his own expense; and during the pendency of such action, the owner may withhold from the contractor the amount of money for which the claim is filed; and in case of judgment against the owner or his property, upon the lien, the owner shall be entitled to deduct from any amount due or to become due by him to the contractor, the amount of the judgment and costs, and if the amount of such judgment and costs shall exceed the amount due by him to the contractor or if the owner shall have settled with the contractors in full, he shall be entitled to recover back from the contractor the amount, including costs for which the lien is established, in excess of any sum that may remain due from him to the contractor.

Contract price lienable though part for ing but oversee construction, *Powell v. superintendence and profits, Smyth v. Nolan* 27 W. 318. Contractor has lien though he did nothing but oversee construction, *Powell v. Lance & Peters* 52 W. 560. Cited 77 W. 304.

**§9716. Foreclosure of Liens.** §11. The liens provided by this act, for which claims have been filed, may be foreclosed and enforced by a civil action in the court having jurisdiction; in any action brought to foreclose a lien, all persons who, prior to the commencement of such action, have legally filed claims of liens against the same property, or any part thereof shall be joined as parties, either plaintiff or defendant; and no person shall begin an action to foreclose a lien upon any property while a prior action begun to foreclose another lien on the same property is pending, but if not made a party plaintiff



or defendant to such prior action, he may apply to the court to be joined as a party thereto, and his lien may be foreclosed in such action; and no action to foreclose a lien shall be dismissed at the instance of a plaintiff therein to the prejudice of another party to the suit who claims a lien.

Contractor not a necessary party to foreclosure, *Brace & Hergert Mill Co. v. Burbank* 87 W. 356.

No judgment until debt due, *Mandioli & Stewart v. American Building Co.* 83 W. 584.

Decree directing immediate possession to purchaser at sale is error, *Brace & Hergert Mill Co. v. Burbank* 87 W. 356.

Claim must be presented in probate before foreclosure, *Crowe & Co. v. Adkinson Const. Co.*, 67 W. 420.

Does not exclude a mortgagee as a necessary party to the action, *Davis v. Bartz* 65 W. 395.

Foreclosure—delay—answer of stipulated damages—building specifications—extras—architect's certificate, *Dickerman v. Reeder* 59 W. 405.

Attorney's fee of \$150 sustained in \$350 case, *Housekeeper v. Livingstone* 48 W. 209.

Contractor and wife may be joined in foreclosure *Rasmussen v. Liming* 50 W. 184.

Complaint for general recovery good against general demurrer—aided by other papers—attorney's fee—land necessary for well, *Lee v. Kimball* 45 W. 656.

Action to foreclose should not be dismissed for failure to complete building and of refusal of architect to give certificate, *Windham v. Independent Telephone Co.* 35 W. 166.

**§9717. Priorities. §12.** In every case in which different liens are claimed against the same property, the court, in the judgment, must declare the rank of such lien or class of liens, which shall be in the following order:

1. All persons performing labor.
2. All persons furnishing material.
3. The subcontractors.
4. The original contractors.

And the proceeds of the sale of the property must be applied to each lien or class of liens in the order of its rank; and personal judgment may be rendered in an action brought to foreclose a lien, against any party personally liable for any debt for which the lien is claimed, and if the lien be established, the judgment shall provide for the enforcement thereof upon the property liable as in case of foreclosure of mortgages; and the amount realized by such enforcement of the lien shall be credited upon the proper personal judgment, and the deficiency, if any remaining unsatisfied, shall stand as a personal judgment, and may be collected by execution against the party liable therefor. The court may allow, as part of the costs of the action, the moneys paid for filing or recording the claim, and a reasonable attorney's fee in the superior and supreme courts.

Attorney's fees allowed in trial court other fee will not be granted in supreme court, *Lavanvay v. Cannon* 37 W. 593.

Provision for attorney's fee is valid—fee reduced and based on items contested, *Littell v. Saulsberry* 40 W. 550.

Provision for attorney's fees is valid, *Griffith v. Maxwell* 20 W. 403.

Mortgagee cannot complain of extras the greater part of which were furnished be-

One action begun all lien claimants not parties must intervene, *Lavanay v. Cannon* 37 W. 593.

Mechanics' liens and not mortgage are meant, *Nason v. Northwestern Co.* 17 W. 142.

In foreclosure on community property both spouses must be made parties—memorandum of settlement with one is admissible—action is equitable and no jury allowed, *Powell v. Nolan* 27 W. 318.

In street grade foreclosure owner may counterclaim damages because waste not deposited as directed, but cannot counterclaim damage for failure to complete in time in absence of agreement of liquidated amount or special showing of injury—tender does not admit contract as pleaded—tender before action need not include cost of lien notice, *Young v. Borzone* 26 W. 4.

Reading of record of notice by auditor and promise to introduce certified copy is sufficient—all questions of sufficiency of notice should be raised on trial, *Greene v. Finnell* 22 W. 186.

Wife is a necessary party to foreclosure of lien, *Sagmeister v. Foss* 4 W. 320.

Personal judgment against contractor not joining in appeal will not be affected by reversal of judgment of foreclosure, *Littell v. Miller* 8 W. 566.

Wives of partners are not necessary parties in foreclosure, *Harrington v. Johnson* 10 W. 542.

fore mortgage was given, *Powell v. Nolan* 27 W. 318.

Priority of labor over materials, later act §9665c.

Attorney's fee of \$2,000 when lien \$21,000 is excessive, *Huttig Bros. v. Denny Hotel Co.* 6 W. 123.

Property liened must be sold before general execution can issue, *Marks v. Pence* 31 W. 426.

Cited 77 W. 304.

**§9718. Personal Action Saved. §13.** Nothing contained in this act shall be construed to impair or affect the right of any person to whom any debt may be due for labor performed or material furnished to maintain a personal action to recover such debt against the person liable therefor.

Personal judgment in foreclosure for materials, etc., ordered by owner, *Brace & Hergert Mill Co. v. Burbank*, 87 W. 356. against party engaging in business but not a partner, *Mattocks v. Great Nor. R. Co.* 94 W. 44.

Deficiency judgment will not be entered Personal judgment may be had on failure of lien, *Spalding v. Burke* 33 W. 679.

**§9719. Taking of Note Does Not Discharge. §14.** The taking of a promissory note or other evidence of indebtedness for any labor performed or material furnished for which a lien is created by law, shall not discharge the lien therefor, unless expressly received as payment and so specified therein.

Lienor authorizing owner to pay contractor loses lien, *Nelson & Castrup v. Culver* 94 W. 548. ment that part cash and a note for the balance would be received in payment, a lien is waived if it was so specified in the note, *Ward v. Thorndyke*, 65 W. 11.

Agreement by contractor to prevent liens does not estop his claim of lien, *Gray v. Hickey* 94 W. 370.

Note held to only fix terms of credit, *Llewellyn Iron Wks. v. Littlefield* 74 W. 86.

Where work is done under an oral agree-

Note not accepted is not waiver—lien on leasehold not defeated under claim that subject is personalty—commission included—interest—statement of notice and leasehold in decree, *Cornelius v. Washington Steam Laundry* 52 W. 272.

**§9720. Materials Not Liable to Writs. §15.** Whenever material shall have been furnished for use in the construction, alteration or repair of property subject to a lien created by this act, such material shall not be subject to attachment, execution, or other legal process, to enforce any debt due by the purchaser of such material, except a debt due for the purchase money thereof, so long as in good faith the said material is about to be applied in the construction, alteration or repair of such property.

Exemption follows material until used and into hands of successor of purchaser, *Polvin v. Wickersham* 15 W. 646.

**§9721. Community Property Liable. §16.** The claim of lien, when filed as required by this act, shall be notice to the husband or wife of the person who appears of record to be the owner of the property sought to be charged with the lien, and shall subject all the community interest of both husband and wife to said lien.

Wife is a necessary party to foreclosure, *Northwest Bridge Co. v. Tacoma Shipbuilding Co.* 36 W. 333.

Record title in husband wife need not be

included in lien notice? *Washington Rock etc. Co. v. Johnson* 10 W. 445.

Where wife a party to some of consolidated action she is bound in all of them, *Douthitt v. MacCulsky* 11 W. 601.

**§9722. Removal of Buildings. §17.** When, for any reason the title or interest in the land, upon which the property subject to the lien is situated cannot be subjected to the lien, the court may order the sale and removal from the land of the property subject to the lien to satisfy the lien.

Removal applies only to estates less than fee, not to owner of fee—character of structure, *Culer v. Keller* 88 W. 334.

Owner having right of forfeiture under

executory contract for sale of land cannot forfeit buildings as against lienors having no notice of his rights and buildings may be removed, *Bell v. Swalwell Land etc. Co.* 20 W. 602.

**§9723. Liberal Construction of Act. §18.** The provisions of law relating to liens created by this act, and all proceedings thereunder, shall be liberally construed with a view to effect their objects.

Claim on Torrens registered land may be amended, *McMullen & Co. v. Croft* 92 W. 411.

Overruled, 96 W. 275.

Cessation of work does not defeat lien, *Bradley v. Donovan-Pattison Realty Co.* 84

Laws and proceedings liberally construed, *Cornelius v. Washington Steam Laundry* 52 W. 272.

Cited 77 W. 304, 92 W. 411.

**Law Not Retroactive. §19.** All rights acquired under any existing law of this state are hereby preserved, and all actions now pending shall be proceeded with under the law as it exists at the time this act shall take effect.

**AN ACT** requiring bonds from contractors contracting to do public work conditioned to pay laborers, mechanics, material men and others. Approved March 18, 1909. Laws '09 p 716.

**§9724. Public Contracts—Conditions of Bond—Claims Against Subcontractors. §1.** Whenever any board, council, commission, trustees or body acting for the state or any county or municipality or any public body shall



contract with any person or corporation to do any work for the state, county or municipality, or other public body, city, town or district, such board, council, commission, trustees or body shall require the person or persons with whom such contract is made to make, execute and deliver to such board, council, commission, trustees or body a good and sufficient bond, with two or more sureties, or with a surety company as surety, conditioned that such person or persons shall faithfully perform all the provisions of such contract and pay all laborers, mechanics and subcontractors and materialmen, and all persons who shall supply such person or persons, or subcontractors, with provisions and supplies for the carrying on of such work, which bond shall be filed with the county auditor of the county where such work is performed or improvement made, except in cases of cities and towns, in which cases such bond shall be filed with the clerk or comptroller thereof, and any person or persons performing such services or furnishing material to any subcontractor shall have the same right under the provisions of such bond as if such work, services or material was furnished to the original contractor: Provided, however, That the provisions of this act shall not apply to any money loaned or advanced to any such contractor, subcontractor or other person in the performance of any such work. L. '15 61, R.&B. §1159.

Money loaned is secured, act denying invalid as to existing contracts, Title G. & S. Co. v. Coffman, Dobson & Co. 97 W. 211.

Does not apply to performance of requirements under police power as grade separation, Dixon v. Parker, Moran & Parker 102 W. 101.

Bond covers materials to any subcontractor actually used—subletting against provision in contractor's bond construed, Crane Co. v. Maryland Casualty Co. 102 W. 69

Goods worn out on work are not lienable, United States Rubber Co. v. American Bonding Co. 86 W. 180.

Bond liable for rental of donkey engine and money loaned to pay labor, Title Guaranty & S. Co. v. First Nat. Bank 94 W. 55.

Reserve of 20 per cent of contract price reserved by commissioners for protection of creditors binds surety—subrogation of surety—attorney fee not allowed lienors if action by surety, Maryland Casualty Co. v. Washington National Bank 92 W. 497.

Designation of public work by common name good—variance in name of contractor, etc., Herren v. Kansas City Cas. Co. 94 W. 77.

Bond covers rental of donkey engine used on work, National L. & B. Co. v. Title G. & S. Co. 85 W. 660.

Lienor has no action on subcontractors bond to contractor, Spokane Merchants Assn. v. Pacific Surety Co. 86 W. 489.

Materials furnished on different contracts confused, liens defeated, Carstens Packing Co. v. Empire State Surety Co. 84 W. 545.

Irrigation district included in statute—took bond authorizing action by itself only—lienor remedy against district, Brown Bros. v. Columbia Irr. Dist. 82 W. 274.

Affirmed, Kepl v. Fidelity & Deposit Co. 81 W. 135.

Money loaned to contractor is within the statute—contracts broader than statute, Puget Sound State Bank v. Gallucci 82 W. 445.

Surety on bond not discharged by application of money paid by contractor on old debt by materialman, Sturtevant v. Fidelity & Deposit Co. 92 W. 52.

Notice of claim prerequisite to action on bond—notice must be "against the bond."

Rodgers v. Fidelity & Dep. Co. 89 W. 316.

Fact that some one intervenes in aid of delivery does not defeat lien, Gate City Lum. Co. v. Montesano, 67 W. 594.

Principal in bond paid on general account part of which was material secured by bond, held surety could not require application of payments made by principal, Crane Co. v. U. S. Fid. & G. Co., 74 W. 91

Must be read in connection with Pacific Hardware Co v. Olson, 72 W. 569.

Proof of actual use questioned, American Mill Co. v. Montesano, 63 W. 683.

Action on contractor's bond may be maintained for supplies that do not actually become a part of the improvement, National Surety Co. v. Bratnober Lumber Co., 67 W. 601.

A surety of street improvement contractor not liable for price of ties used therein and in other contracts and finally sold at a bankrupt sale, City Retail Lumber Co. v. Title Guaranty Co, 72 W. 300.

The bond of a contractor for improvement of a street does not cover repairs made on a rented steam shovel, Standard Boiler Works v. National Surety Co., 71 W. 28.

Failure to take bond liability is absolute—lumber billed to contractor and part diverted is not lienable—mailing statements, Gate City Lum. Co. v. Montesano 60 W. 586.

Additional work or change in plans, surety released and city liable—local improvement no defense, Fransioli v. Thompson 55 W. 259.

Overstatement of amount due will not defeat lien—notice signed by agent, Strandell v. Moran 49 W. 533.

Obligors on bond are only proper party defendants—surety taking assignment of contract is liable on both bond and contract and fraud of city officials will not relieve him against material man—surety cannot say his attorney told him he was released, Spokane etc. Co. v. Boyd 28 W. 90.

State courts have jurisdiction of bond given to the United States and the United States is a proper party plaintiff, United States v. Rundle 27 W. 7.

Under act of congress recovery may be had on bond though surety finished con-

tract thereby expending more than penal amount of bond, *Griffith v. Rundle* 23 W. 453.

Laborer has action on bond given between private parties to secure against liens, *McDonald v. Davey* 22 W. 366.

Sureties liable though principal does not sign bond and action may be brought against all on contract and bond *Eureka Sandstone Co. v. Long* 11 W. 161.

Laborer has action on bond given between private parties to secure against liens, *McDonald v. Davey* 22 W. 366.

If work should be done for private citizen and there would be lien bond must be taken as in the case of public bridges—right of action—right of action on bond assignable—acceptance of order on contractor does not waive rights, *Gilmore v. Westerman* 13 W. 390.

Sureties cannot deny authority of school district to make contract with principal, *Price v. Scott* 13 W. 574.

Bond not required in street grade contracts and if one given sureties may deny liability thereon except merely as a contract between the parties thereto, *Sears v. Williams* 9 W. 428; but see *McDonald v. Davey* 22 W. 366.

Applies to local assessment county roads

**AN ACT** relating to contracts upon public work and providing for establishing and enforcing claims for materials, supplies or provisions furnished for use in the construction, performance, carrying on, prosecution and doing of such work. Approved March 19, 1915. Laws '15, p. 525.

**§9725. Supplies to Subcontractors—Notice to Contractor.** §1. Every person, firm or corporation furnishing materials, supplies or provisions to be used in the construction, performance, carrying on, prosecution or doing of any work for the state, or any county, city, town, district, municipality or other public body, shall, not later than ten days after the date of the first delivery of such materials, supplies or provisions to any sub-contractor or agent of any person, firm or corporation having a sub-contract for the construction, performance, carrying on, prosecution or doing of such work, deliver or mail to the contractor a notice in writing stating in substance and effect that such person, firm or corporation has commenced to deliver materials, supplies or provisions for use thereon, with the name of the sub-contractor or agent ordering or to whom the same is furnished and that such contractor and his bond will be held for the payment of the same, and no suit or action shall be maintained in any court against the contractor or his bond to recover for such material, supplies or provisions or any part thereof unless the provisions of this act have been complied with.

Knowledge does not dispense with notice of materials—materials after notice, *Cascade Lum. & S. Co. v. Wright* 99 W. 421.

**§9726. Municipality Liable.** §2. If any board of county commissioners of any county, or mayor and common council of any incorporated city or town, or tribunal transacting the business of any municipal corporation shall fail to take such bond as herein required, such county, incorporated city or town, or other municipal corporation shall be liable to the persons mentioned in the first section of this act, to the full extent and for the full amount of all such debts so contracted by such contractor.

Title sufficient, *Hambach v. Ward*, 69 W. 351.

Act is not penal and does not require strict construction, *Hambach v. Ward*, 69 W. 351.

Contractor's creditors can only recover the reasonable value of goods or labor furnished, *Hambach v. Ward*, 69 W. 351.

309 §95.

Judgment against contractor will not de-

where county is liable for one-third of the cost, *Rounds v. Whatcom County* 22 W. 106.

In bond on county road, held, that recital of bond that it is a common law bond will not defeat the statute and the action should be brought on the bond, *Baum v. Whatcom County* 19 W. 626.

Is not applicable to local ditches, *Wallace v. Skagit County* 8 W. 457.

Bond conditioned to "perform said work and comply with said contract" held bad, *Puget Sound Brick Co. v. School District* 12 W. 118.

Bond is not given to secure contract, but against liens and may be executed before or after contract *Spokane & Idaho Lumber Co. v. Loy* 21 W. 501.

Statute does not cover street grading contract, *Clough v. Spokane* 7 W. 279.

Bond to directors of district and defective in form, not justified nor filed is good—statute protects sub-contractors, *Ihrig v. Scott* 5 W. 584; *Wadsworth v. School District* 7 W. 485.

School districts are within act, *Maxon v. School District* 5 W. 142.

City has power to contract that all claims shall be paid and thereby become trustee, *State ex rel. Bartelt v. Liebes* 19 W. 589.

feet action on bond, *Fisher v. Quigley* 8 W. 327.

Judgment for amount due lienor to action not necessary, *Maxon v. School District* 5 W. 152.

In action against contractor school district not a necessary party, *Pacific Mfg. Co. v. School District* 6 W. 121.

Act does not violate constitution requiring revenues to be applied exclusively to schools, *id.*



§9727. **Amount of Bond—Notice of Claim—Attorney's Fees.** §3. The bond mentioned in [§9724] section 1159 shall be in an amount equal to the full contract price agreed to be paid for such work or improvement, and shall be to the State of Washington, except in cases of cities and towns, in which cases such municipalities may by general ordinance fix and determine the amount of such bond and to whom such bond shall run; Provided, The same shall not be for a less amount than twenty-five per cent. (25%) of the contract price of any such improvement, and may designate that the same shall be payable to such city, and not to the State of Washington, and all such persons mentioned in [§9724] said section 1159 shall have a right of action in his, her, or their own name or names on such bond for work done by such laborers or mechanics, and for materials furnished or provisions and goods supplied and furnished in the prosecution of such work, or the making of such improvements; Provided, That such persons shall not have any right of action on such bond for any sum whatever, unless within thirty (30) days from and after the completion of the contract with an acceptance of the work by the affirmative action of the board, council, commission, trustees, officer, or body acting for the state, county or municipality, or other public body, city, town or district, the laborer, mechanic or subcontractor, or materialman, or person claiming to have supplied materials, provisions or goods for the prosecution of such work, or the making of such improvement, shall present to and file with such board, council, commission, trustees or body acting for the state, county or municipality, or other public body, city, town or district, a notice in writing in substance as follows;

To (here insert the name of the state, county or municipality or other public body, city, town or district):

Notice is hereby given that the undersigned (here insert the name of the laborer, mechanic or subcontractor, or materialman, or person claiming to have furnished labor, materials or provisions for or upon such contract or work) has a claim in the sum of.....dollars (here insert the amount) against the bond taken from.....(here insert the name of the principal and surety or sureties upon such bond) for the work of..... (here insert a brief mention or description of the work concerning which said bond was taken).

(here to be signed).....

Such notice shall be signed by the person or corporation making the claim or giving the notice, and said notice, after being presented and filed, shall be a public record open to inspection by any person, and in any suit or action brought against such surety or sureties by any such person or corporation to recover for any of the items hereinbefore specified, the claimant shall be entitled to recover in addition to all other costs, attorney's fees in such sum as the court shall adjudge reasonable; Provided, however, That no attorney's fees shall be allowed in any suit or action brought or instituted before the expiration of thirty days following the date of filing of the notice hereinbefore mentioned; Provided further, That any city may avail itself of the provisions of this act, notwithstanding any charter provisions in conflict herewith; And provided further, That any city or town may impose any other or further conditions and obligations in such bond as may be deemed necessary for its proper protection in the fulfillment of the terms of the contract secured thereby, and not in conflict herewith. L. '15 61, R.&E. §1161.

Filing in 31 days after acceptance fatal, though some work done afterward, *Pearson v. Puget Sound Mach. Depot* 99 W. 596.

Informal notice acted on held sufficient—pleading materials furnished contractor, proof to subcontractor not fatal, *Van Doren R. & C. Co. v. Guardian Cas. & G. Co.* 99 W. 68.

Time runs from "acceptance" of public bridge, *Title G. & S. Co. v. Coffman, Dobson & Co.* 97 W. 211.

Notice necessary to constitute cause of action, *Carstens Packing Co. v. Mitchell* 95 W. 72.

Filing of assignment by contractor of re-

serve fund due him without statutory requirements held insufficient to hold bond or owner, *Aberdeen State Bank v. Spokane P. & C. Co.* 102 W. 68.

Affirmed, *McGowan Bros. Hdw. Co. v. Fidelity & Deposit Co.* 84 W. 470.

Rental of pump and derrick lienable, *Hurley-Mason Co. v. American Bonding Co.* 79 W. 564.

City may require additional conditions in bonds, *Puget Sound State Bank v. Gallucci* 82 W. 445.

Time to file lien runs from acceptance by architect for state board of control, *Union Iron Works v. Strauser* 82 W. 51.

**AN ACT** regulating contracts for public improvement, fixing the percentages to be retained for the protection of materialmen and laborers, giving a lien thereon, and providing for the foreclosure thereof. L. '21 ch. 166.

**§9727-1. Funds to Be Reserved.** §1. That contracts for public improvements or work by the state, or any county, city, town, district, board, or other public body, shall provide, and there shall be reserved from the moneys earned by the contractor on estimates during the progress of the improvement or work, a sum equal to fifteen per cent. (15%) of such estimates, said sum to be retained by the state, county, city, town, district, board, or other public body, as a trust fund for the protection and payment of any person or persons, mechanic, sub-contractor or materialman who shall perform any labor upon such contract or the doing of said work, and all persons who shall supply such person or persons or sub-contractors with provisions and supplies for the carrying on of such work. Said fund shall be retained for a period of thirty (30) days following the final acceptance of said improvement or work as completed, and every person performing labor or furnishing supplies towards the completion of said improvement or work shall have a lien upon said fund so reserved, provided such notice of the lien of such claimant shall be given in the manner and within the time provided in [§9727] section 1161 of Remington & Ballinger's Annotated Code and Statutes of Washington as now existing and in accordance with any amendments that may hereafter be made thereto: Provided, however, That where in any improvement or work the contract price shall exceed two hundred thousand dollars (\$200,000), but ten per cent. (10%) shall be reserved on estimates in excess of said sum or where the aggregate of previous estimates equals or exceeds said amount. The provisions of this act shall be deemed exclusive and shall supersede all provisions and regulations in conflict herewith.

**§9727-2. Use of Reserve.** §2. That after the expiration of thirty (30) days following the final acceptance of said improvement or work, and the expiration of the time for the filing of lien claims, as herein provided, said reserve, or all amounts thereof in excess of a sufficient sum to meet and discharge the claims of materialmen and laborers who have filed their claims, as provided for in section 1 of this act, together with a sum sufficient to defray the cost of such action and to pay attorneys' fees, shall be paid to said contractor.

**§9727-3. Limitation of Claims and Action.** §3. Any person, firm or corporation filing a lien claim against said reserve fund shall have four (4) months from the time of the filing of claims against said fund in which to bring an action for the foreclosure of such lien. The liens provided for in this chapter shall be enforced by a civil action in the superior court of the county wherein the lien was filed, and shall be governed by the laws regulating the proceedings in civil actions touching the mode and manner of trial, and the proceedings and laws to secure property so as to hold it for the satisfaction of any lien that be against it. In the event the lien claimant fails to bring an action within the time provided for and limited herein, the said reserve fund shall be discharged from the lien of said claimant and the moneys so held shall be forthwith paid to the contractor: Provided, however, That the limitation of four (4) months provided for herein shall not be construed as a limitation upon the right to sue the contractor or his surety where no right of foreclosure against said fund is sought.

which such sire is advertised for service. **Provided, that owners of sires who are not in possession of pedigrees for such sires shall not be debarred from the benefits of this act.**

**§9730. Sire to Be Certified.** §2. The county auditor upon the receipt of the statement as specified in section one of this act duly verified by affi-



99 W. 68.

Time runs from "acceptance" of public bridge, Title G. & S. Co. v. Coffman, Dobson & Co. 97 W. 211.

Notice necessary to constitute cause of action, Carstens Packing Co. v. Mitchell 95 W. 72.

Filing of assignment by contractor of re-

Hurley-Mason Co. v. American Dredging Co. 79 W. 564.

City may require additional conditions in bonds, Puget Sound State Bank v. Gallucci 82 W. 445.

Time to file lien runs from acceptance by architect for state board of control, Union Iron Works v. Strauser 82 W. 51.

Acceptance of state's building by state's architect begins thirty day period for claims, Wheeler, Osgood Co. v. Fidelity & Deposit Co. 78 W. 328.

Time for claim runs from payment and not "final estimate" in city work, Denny-Renton Co. v. National Surety Co. 93 W. 103.

Subcontractor may file notice of claim before work accepted, Washington, etc., Stone Co. v. Murphy 81 W. 266.

Notice not required if no bond taken and action is against city, Crab Creek Lum Co. v. Othello 81 W. 52.

Arbitration agreement between state and contractor held to have waived filing of notice, Fidelity & Dep. Co. v. Spokane Merchants Assn. 91 W. 170.

Letters notifying treasurer of a library board of a balance due not sufficient no-

tice, Robinson Mfg. Co. v. Bradley, 71 W. 611.

Actual notice to sureties on contractor's bond for public work does not excuse failure to give written notice, Robinson Mfg. Co. v. Bradley, 71 W. 611.

Judgment for quantum meruit may be given in a suit by an employee on contractor's bond, the principal and surety being allowed to make any available defenses, Kongsbach v. Casey, 66 W. 643.

Notice to surety sufficient—time of filing—books as evidence, Cascade Lumber Co. v. Aetna Indemnity Co. 56 W. 503.

Notice of claim of lien must be filed—failure to file bond, Crane Co. v. Aetna Indemnity Co. 43 W. 516.

Notice necessary to give cause of action, Huggins v. Sutherland 39 W. 552.

**AN ACT** relating to contractors and bonds upon public works and to the legal force, meaning, construction and effect of any and all bonds signed and given in conformity and in compliance with the provisions of that certain act entitled, "An act relating to contractors and bonds upon public works, and amending sections 1159 and 1161 of Remington & Ballinger's Codes and Statutes of Washington," passed the House February 8, 1915, passed the Senate February 24, 1915, and passed notwithstanding the Governor's veto on March 3, 1915. Approved March 19, 1915. Laws '15 p 548.

**§9728. Retroactive Effect.** §1. That all bonds issued and given prior to June 12, 1915, which embody the terms and provisions prescribed and provided for and which conform to and comply with the terms and provisions of that certain act entitled, "An act relating to contractors and bonds upon public works, and amending [§§9724, 9727] sections 1159 and 1161 of Remington & Ballinger's Annotated Codes and Statutes of Washington," passed the House February 8, 1915, passed the Senate February 24, 1915, and passed notwithstanding the Governor's veto on March 3, 1915, shall have the same legal force and effect and be construed, and the rights and liabilities of all parties thereto and thereunder shall be the same as though the said act entitled, "An act relating to contractors and bonds upon public works, and amending [§§9724, 9727] section 1159 and 1161 of Remington & Ballinger's Annotated Codes and Statutes of Washington" had been in full force and effect at the time any such bond was given, and the courts of this state shall give to such bonds the same force and effect and no other or greater force and effect than would have been given had the said act entitled: "An act relating to contractors and bonds upon public works, and amending [§§9724, 9727] sections 1159 and 1161 of Remington & Ballinger's Annotated Codes and Statutes of Washington" been in force and effect at the time such bond was signed and given.

## SIRES.

**AN ACT** to protect stock breeders in the State of Washington and declaring an emergency. Approved February 14, 1890. Laws '90 p 451.

**§9729. Lien for Service of Sires.** §1. That in order to secure to the owner or owners of sires payment for service the following provisions are enacted. That every owner of a sire having a service fee, in order to have a lien upon the female served, and upon the get of any such sire under the provisions of this act for such service shall file, for record with the county auditor of the county where said sire is kept for service, a statement verified by oath or affirmation to the best of his knowledge and belief, giving the name, age, description and pedigree as well as the terms and conditions upon which such sire is advertised for service. Provided, That owners of sires who are not in possession of pedigrees for such sires shall not be debarred from the benefits of this act.

**§9730. Sire to Be Certified.** §2. The county auditor upon the receipt of the statement as specified in section one of this act duly verified by affi-



davit, shall issue a certificate to the owner, or owners of said sire, which shall be posted by the owner in a conspicuous place where said sire may be stationed which certificate shall state the name, age, description, pedigree and ownership of such sire, the terms and conditions upon which the said sire is advertised for service and that the provisions of this act so far as relates to the filing of the statement aforesaid has been complied with.

**§9731. Filing Lien. §3.** The owner or owners of any such sire receiving such certificate, by complying with the last two preceding sections of this chapter, shall obtain and have a lien upon the female served for the period of one year from the date of service, or upon the get of any such sire for the period of one year from the date of birth of such get: Provided, Said owner or owners shall file for record a statement of account, verified by affidavit, with the county auditor of the county wherein the service has been rendered, of the amount due such owner or owners for said service, together with a description of the female served, within ten months from the date of service or date of birth, as the case may be: Provided further, That the lien upon the get of any such sire shall be a preferred lien: And provided further, That no sale or transfer of any female animal served shall defeat the right of such lien holder. R&B §3163, L. '13, ch. 53.

**§9732. — Foreclosure. §4.** Liens under this act to be foreclosed in the same manner as liens upon other personal property are foreclosed.

**§9733. Filing Fees. §5.** For filing certificate, making copy of such affidavit, and the certificate of date of such filing, the clerk of record shall be entitled to the same fees as are provided by law for similar service in regard to chattel mortgages.

### WAGES.

**§9734. Priority of Wages in Insolvency. §1972.—34.** In all assignments of property made by any person to trustees or assignees on account of the inability of the person at the time of the assignment to pay his debts, or in proceedings in insolvency, the wages of the miners, mechanics, salesmen, servants, clerks, or laborers, employed by such persons to the amount of one hundred dollars, each, and for services rendered within sixty days previously are preferred claims and must be paid by such trustees or assignees before any other creditor or creditors of the assignor.

**Priority of lien for wages over materials** *ture, held, that lien was prior to mortgage on furniture added by individual, Moore v. §9665c.*

*Bankrupt entitled to priority, In re Holden 127 Fed. 980.*

*Mortgage of furniture by partnership with provision to cover all furniture added. One partner buys business and adds furni-*

*Terry 17 W. 185.*

*Providing this lien without notice to debtor is due process of law—lienors may join in action, Gleason v. Tacoma Hotel Co. 16 W. 412.*

**§9735. — Estate of Decedent. §1973.—35.** In case of the death of any employer, the wages of each miner, mechanic, salesman, clerk, servant and laborer, for services rendered within sixty days next preceding the death of the employer, not exceeding one hundred dollars; rank in priority next after the funeral expenses, expenses of the last sickness, the charges and expenses of administering upon the estate and the allowance to the widow and infant children, and must be paid before other claims against the estate of the deceased person. *Priority in settlement of estate, later act §9803.*

**§9736. — Levy of Writs. §1974.—36.** In cases of executions, attachments, and writs of similar nature, issued against any person except for claims for labor done, any miners, mechanics, salesmen, servants, clerks and laborers who have claims against the defendant for labor done, may give notice of their claims and the amount thereof sworn to by the person making the claim to the creditor and the officer executing either of such writs at any time before the actual sale of property levied on, and unless such claim is disputed by the debtor or a creditor, such officer must pay to such person out of the proceeds of the sale the amount each is entitled to receive, for services rendered, within sixty days next, preceding the levy of the writ not exceeding one hundred dollars. If any or all the claims so presented and claiming preference under this chapter are disputed by either the debtor or a creditor, the person presenting the same must commence an action within ten days for the recovery there-

of and must prosecute his action with due diligence or be forever debarred from any claim of priority of payment thereof; and the officer shall retain possession of so much of the proceeds of the sale as may be necessary to satisfy such claim until the determination of such action and in case judgment be had for the claim or any part thereof, carrying costs, the costs taxable therein shall likewise be a preferred claim with the same rank as the original claim.

Logger's lien prior to garnishment, Du- served attachment dissolved and chattel  
bois Lumber Co. v. Dietderich 97 W. 1. mortgage taken held, that lienors have  
Exemption in garnishment, §8022. no action against mortgagee, Wells v. Co  
Levy of attachment and lien notices lumbia Nat. Bank 6 W. 621.

**AN ACT** providing for a lien for employes. Approved March 6, 1897. Laws '97 p 55.

**§9737. Laborer's Lien on Property of Corporation—Priorities.** §1. Every person performing labor for any person, company or corporation in the operation of any railway, canal or transportation company, or any water, mining or manufacturing company, saw mill, lumber or timber company, shall have a prior lien on the franchise, earnings, and on all the real and personal property of said person, company or corporation, which is used in the operation of its business, to the extent of the moneys due him from such person, company or corporation, operating said franchise or business, for labor performed within six months next preceding the filing of his claim therefor, as hereinafter provided; and no mortgage, deed of trust or conveyance shall defeat or take precedence over said lien.

Donkey engines used by company held though claimed by individuals, Rogers v. Reynolds 95 W. 470.

Lien confined to interest of employer—fixtures in operation of coal mine, Cook v. Washington-Oregon Corporation 84 W. 68.

Labor lien prior to record belated chattel mortgage, Olsen v. Smith 84 W. 228.

Manager and superintendent is not "laborer," Wintermote v. MacLafferty 233 Fed. 95.

Owner-manager of corporation has not priority for salary, Keyes v. Davie 231 Fed. 688.

A copy of lien notice must be served on employer within 30 days after it is filed for record, Heal v. Evans Creek Co., 71 W. 225.

Logger paid by measurement for cutting logs not within the statute, Graham v. Gardner 45 W. 648.

Person entitled to lien though a stock-

holder and officer, Cors & Wegener v. Ballard Iron Works 41 W. 390.

This act is not class legislation, Fitch v. Applegate 24 W. 25.

Claimants may join—complaint aided by exhibit of contract—attorney's fee allowable—notice need not particularize claim—lien subsequent to prior mortgage—lien not lost by taking conveyance, Fitch v. Applegate 24 W. 25.

Lienor with knowledge of prior unrecorded chattel mortgage has claim superior to such mortgage—lienor has lien though he hires help, Blumauer v. Clock 24 W. 596.

Shall be liberally construed and is broad enough to include all persons employed, traveling salesman for lumber company has lien in bankruptcy. In re Lawler 110 Fed. Rep. 135.

Cited 77 W. 70.

**§9738. Notice of Claim.** §2. No person shall be entitled to the lien given by the preceding section, unless he shall, within ninety days after he has ceased to perform labor for such person, company or corporation, filed for record with the county auditor of the county in which said labor was performed, or in which is located the principal office of such person, company or corporation in this state, a notice of claim, containing a statement of his demand, after deducting all just credits and offsets, the name of the person, company or corporation, and the name of the person or persons employing claimant, if known, with a statement of the terms and conditions of his contract, if any, and the time he commenced the employment and the date of his last service, and shall serve a copy thereof on said person, company or corporation within thirty days after the same is so filed for record.

At hearing on appeal appellant for first service of notice, held too late, Cook v. Washington-Oregon Corporation 84 W. 68.

**§9739. Service as in Summons.** §3. Service of notice, as herein required, may be made in the same manner as summons in civil actions.

**§9740. Foreclosure of Lien.** §4. Any such lien may be enforced within the same time and in the same manner as mechanics' liens are foreclosed.

Duration of lien limited—bankruptcy does not toll statute, McDermott v. Tolt Land Co. 101 W. 114.



**§9741. Payment by Receiver.** §5. Whenever a receiver or assignee is appointed for any person, company or corporation, the court shall require such receiver or assignee to pay all claims for which a lien could be filed under this act, before the payment of any other debts or claims other than operating expenses.

## MORTGAGE

**ASSIGNMENT AND SATISFACTION** **CONDITIONAL SALES** §9767.

§9742.

Bill lading not to affect §470.

**CHATTEL** §9746.

**CRIMES** §9771.

**MIXED** §9774.

Realty mortgage, form of §1927.

Registered land §5788.

### ASSIGNMENT AND SATISFACTION.

**AN ACT** relating to assignments and satisfaction of mortgages. Approved February 25, 1897. Laws '97 p 23.

**§9742. Record of Assignment of Mortgage.** §1. Any person to whom any real estate or chattel mortgage is given, or the assignee of any such mortgage, may, by an instrument in writing, by him signed and acknowledged in the manner provided by law entitling mortgages to be recorded, assign the same to the person therein named as assignee, and any person to whom any such mortgage has been so assigned, may, after the assignment has been recorded in the office of the auditor of the county wherein such mortgage is of record, acknowledge satisfaction of the mortgage, and discharge the same of record.

Authorizes record of assignment of mortgages, and establishes priority of lien according to priority of record, *Seattle Nat Bank v. Ally*, 66 W. 610.

Mortgagee taking title and conveying with full covenants, no assignment being recorded, mortgage held merged, *Summy v. Ramsey* 53 W. 93.

Purchaser may accept satisfaction by assignee without requiring paper mortgage secured, *Christensen v. Raggio* 47 W. 468.

Assignee of record may satisfy it and purchaser takes title against assignment

not of record, *Gottstein v. Harrington* 25 W. 508.

Prior to this statute assignments though of record did not protect rights, *Howard v. Shaw* 10 W. 151.

Prior to statute assignee of mortgage though assignment not recorded was prior to subsequent incumbrance in good faith when assignor had wrongfully satisfied mortgage of record, *Fischer v. Woodruff* 25 W. 67.

Failure to record will give subsequent purchasers good title, *Gottstein v. Harrington* 25 W. 508.

**§9743. Assignees—Satisfaction of Record.** §2. All satisfactions of mortgages heretofore made by the assignees thereof, where the assignment was in writing, signed by the mortgagee or assignee, and where the same was recorded in the office of the auditor of the county wherein the mortgage was recorded, are hereby validated, and such satisfactions of mortgages so made shall have the same effect as if made by the mortgagees in such mortgages.

**AN ACT** to secure the cancellation of satisfied mortgages. Approved January 29, 1886. General repeal. Laws '86 p 116.

**§9744. Satisfying Record—Separate Instrument.** §1. Whenever the amount due on any mortgage is paid, the mortgagee, his legal representatives or assigns, shall, at the request of any person interested in the property mortgaged, acknowledge satisfaction of the same on the margin of the page upon which the mortgage is recorded (which marginal satisfaction shall be at the time attested by the auditor or his deputy), or by executing an instrument in writing referring to the mortgage by the volume and page of the record or otherwise sufficiently describing it and acknowledging satisfaction in full thereof. Said instrument shall be duly acknowledged, and upon request shall be recorded in the county wherein the mortgaged property is situated. Every instrument of writing heretofore recorded and purporting to be a satisfaction of mortgage, which sufficiently describes the mortgage which it purports to satisfy so that the same may be readily identified, and which has been duly acknowledged before an officer authorized by law to take acknowledgments or oaths, is hereby declared legal and valid, and a certified copy of the record thereof is hereby constituted prima facie evidence of such satisfaction.

**§9745. Failure to Satisfy Record—Remedy.** §2. If the mortgagee shall fail so to do after sixty days from the date of such request or demand he shall forfeit and pay to the mortgagor the sum of twenty-five dollars, to be recovered in any court having competent jurisdiction, and said court, when convinced that said mortgage has been fully satisfied, shall issue an order in writing directing the auditor to cancel said mortgage, and the auditor shall immediately record the order and cancel the mortgage as directed by the court, upon the margin of the page upon which the mortgage is recorded, making reference thereupon to the order of the court and to the page where the order is recorded.

Forfeiture for failure to satisfy applies to trust deed and is full measure of damages, *Morrill v. Title Guar. & S. Co.* 94 W 258.

## CHATTEL.

**AN ACT in relation to mortgages on certain kinds of property.** Approved November 29, 1881. C81 §§1986-98.

**§9746. Chattel Mortgages.** §1986.—1. That mortgages may be made upon all kinds of personal property, and upon the rolling stock of a railroad company, and upon all kinds of machinery, and upon boats and vessels, and on growing crops, and on portable mills and such like property.

Indian may make chattel mortgage or sell farm crop, *Rider v. LaClair* 77 W. 488.

Mortgage reciting it was given to secure note cannot be varied by parol to show note was in lieu of cash and was not to be secured, *Holt Mfg. Co. v. Brotherton* 91 W. 354.

Personal property included in realty mortgage is not held, *Pacific State Bank v. Coats* 205 Fed. 618.

Description sufficient against attacking creditor with actual notice, *Fenby v. Hunt* 53 W. 127.

Description of chattels need not be with such particularity as to exclude all other property, *Wittler-Corbin Co. v. Martin* 53 W. 65.

Provisions not repealed by §9759 relating of filing etc., *Mills v. Smith* 177 Fed. 652.

Possession by mortgagee does not deprive owner of title—sale at retail does not authorize sale in bulk—conversion, *Richter v. Buchanan* 48 W. 32.

Bill of sale as security must be formally executed as chattel mortgage to be valid against subsequent purchasers—pre-existing debt is subsequent, *Hicks v. National Surety Co.* 50 W. 16.

Mortgage is a mere lien and conveys no title, *Silsby v. Albridge* 1 W. 119; *Ephraim v. Kelleher* 4 W. 249; so whether in possession as pledgee or not *Marsh v. Wade* 1 W. 546.

Words of grant not necessary, the word "mortgage," sufficient, *Marsh v. Wade* 1 W. 538.

Mortgagee in possession may replevin property taken from him by attachment id.

Mortgagee not in possession cannot proceed as owner to recover property when levied on as property of another, *Sayward v. Nunan* 6 W. 87.

Creditors may show that possession of third parties with bill of sale is the possession of the debtor, id.

Mortgagor in possession with parol agreement that he may use part of proceeds to replenish stock and pay expenses in the absence of purpose to defraud other creditors is valid, *Ephraim v. Kelleher*, 4 W. 243.

In action by mortgagee against sheriff for wrongful levy, held, that mortgagee is

possession with power to sell and apply proceeds to debt though mortgage not in statutory form is valid—proof of value and recovery—special damage *Sheehan v. Levy* 1 W. 149; 3 W. 420.

One partner may execute mortgage to secure partnership debt though notes signed by partners individually, *West Coast Grocery Co. v. Stinson* 13 W. 255.

Fraud to defeat mortgage must be specially pleaded, taking of mortgage for additional security is not fraudulent, id.

Location of chattels need not be given if sufficiently described, *Mendenhall v. Kratz* 14 W. 453.

Vendor accepting mortgage cannot claim absolute title by terms of bill of sale if parties to foreclosure had no notice of terms of bill of sale, *Hinchman v. Ry. Co.* 14 W. 349.

Mortgage will include property within description contracted for but not delivered and will not include property purchased by subsequent vendee of mortgaged property and not contemplated, *Hinchman v. Ry. Co.* 14 W. 349.

Mortgage without corporate authority but acquiesced in by stockholders is valid and is good against subsequent creditors—mortgage by one corporation to another with same president is valid, *Roy & Co. v. Scott, Hartley & Co.* 11 W. 399.

Mortgage with defective description is good against subsequent mortgagee or purchaser with notice, *Darland v. Levins* 1 W. 582.

Chattel mortgage given as indemnity against loss as joint maker of promissory note is valid, *Warren v. His Creditors* 3 W. 48.

In sale by one of several note holders secured by one mortgage purchaser takes title and note holders pro rate proceeds, *First Nat. Bank v. Woolery* 6 W. 215.

Mortgage with possession is prior to attachment though it is not of record, *First Nat. Bank v. Carter* 6 W. 494.

Facts necessary to allege in action by mortgagee against subsequent mortgagee for conversion, *Binnian v. Baker* 6 W. 50.

Bill of sale may be shown a mortgage when mortgagee in possession is attached.



Voorhies v. Hennesy 7 W. 243.

Where there is no reservation by vendor bill of sale will not be construed chattel mortgage, Hammer v. O'Loughlin 8 W. 393.

Chattel mortgage of lumber held void for indefinite description McDonald v. Tower Lumber Co. 10 W. 474.

Mortgage of wheat on certain land and notice of sale of certain number of sacks is good description, Harker v. Woolery 10 W. 484.

Mortgagee does not waive his rights by consenting to sale to vendee having notice of mortgage, Morphy v. Currie 21 W. 232.

Vendor's lien may be reserved by agreement, Horr v. Powe 18 W. 536.

Promissory notes mortgaged and foreclosed there is no equity for mortgagor. Dubuque v. Stich 16 W. 641.

Chattel mortgage fraudulent and cancelled for benefit of mortgagor because he was ignorant and imposed upon, Melbye v. Melbye 15 W. 648.

Two chattel mortgages executed at same

**\$9747. Affidavit of Good Faith—To Be Filed within Ten Days.** §1987. A mortgage of personal property is void as against all creditors of the mortgagor, both existing and subsequent, whether or not they have or claim a lien upon such property, and against all subsequent purchasers, pledgees, and mortgagees and encumbrancers for value and in good faith, unless it is accompanied by the affidavit of the mortgagor that it is made in good faith, and without any design to hinder, delay, or defraud creditors, and unless it is acknowledged and filed within ten days from the time of the execution thereof in the office of the county auditor of the county in which the mortgaged property is situated as provided by law. L. '15 277. R.&B. §3660

Chattel mortgage prior to subsequent agister's lien, Levitch v. Link 95 W. 639.

Preferred creditor taking quit claim deed with actual notice of prior chattel mortgage unrecorded unacknowledged and without affidavit of good faith is both creditor and incumbrances, Embagi v. N. W. Imp. Co. 101 W. 558.

Assignment for benefit of creditors prior to mortgage not recorded within ten days, Keves v. Sabin 101 W. 619.

Possession as security dispenses with affidavit, Haskins v. Fidelity Nat. Bank 93 W. 63.

Chattel mortgage prior to later chattel lien, Rothweiler v. Winton Motor Car Co. 92 W. 215.

Unacknowledged mortgage is void — acknowledgment cannot be proved by parol — subsequent mortgage good with knowledge of prior one, Smith v. Allen 78 W. 135.

Unrecorded chattel mortgage valid against subsequent creditors who have not acquired specific lien, Pacific Coast Biscuit Co. v. Perry 77 W. 352.

Mortgagee, with notice of first mortgage without affidavit, takes valid mortgage, Belcher v. Young 90 W. 303.

Receiver in insolvency of corporation takes property when mortgage without affidavit of good faith, Mutual Inv. Co. v. Walton Machine Co. 91 W. 298.

Affidavit, etc., required in assignment of earnings of waterworks company as security, Heermans v. Blakeslee 93 W. 595.

Bill of sale intended as mortgage must have affidavit—action to foreclose is not reducing to possession — execution valid levy, Kato v. Union Oil Co. 92 W. 473.

Possession without affidavit and recording, mortgage valid. Weston v. First National Bank 82 W. 65.

time the one first recorded is not fraudulent as to the other, Commercial Bank v. Chilberg 14 W. 47.

Mortgage describing generally stock of goods with location held good—husband may mortgage community personalty to wife for loans from her separate estate, Dillon v. Dillon 13 W. 594.

Execution levy is prior to mortgage executed before levy but not accepted by mortgagee until after levy, Griswold v. Case 13 W. 623.

Refusal of mortgagee to accept amount due destroys lien, Helphrey v. Strobach 13 W. 128.

Mortgage may be bad for indefinite description as to innocent purchasers and be good as to second mortgage to secure prior debt, Howard v. Gemming 10 W. 30.

Mortgage of stock of goods with mortgagee in possession to apply proceeds will cover goods added to stock though there is no stipulation to that effect, Armstrong v. Ford 10 W. 64.

Labor lien superior to record-related chattel mortgage, Olson v. Smith 84 W. 228.

Cited in setting aside conveyance in bankruptcy, Benner v. Scandinavian-Am. Bank. 73 W. 488.

Private water works are personal property when the land does not belong to owner of the works and is invalid without affidavit and record properly made, Dunsmuir v. Port Angeles etc. Co. 24 W. 104.

Lienor is "creditor" and has priority over prior unrecorded chattel mortgage though he has knowledge of the mortgage, Blumauer v. Clock 24 W. 596.

Chattel mortgage without affidavit acknowledgment and record is invalid against bona fide purchaser of mortgagor. Carstens v. Moyer 22 W. 61; so whether creditor obtains specific lien or not, Wilamette Casket Co. v. Cross etc. Co. 12 W. 190; receiver in case does not change principle id.

Bill of sale adjudged a chattel mortgage and invalid in claim to property on execution—it cannot be foreclosed as a mortgage, Sayward v. Thayer 9 W. 22.

Chattel mortgage is valid as to subsequent purchasers or creditors with notice though not verified and recorded, Mendenhall v. Kratz 14 W. 453; Roy & Co. v. Scott, Hartley & Co. 11 W. 399; Urquardt v. Coss 6 W. 249.

The inclusion of personalty in realty mortgage and recorded as realty mortgage is invalid, Manhattan Trust Co. v. Seattle Coal & Iron Co. 16 W. 499; Sligh v. Shelton etc. R. R. Co. 20 W. 16.

Chattel mortgage not verified nor recorded held machinery, etc., attached by bolts, screws and nails to building not especially adapted, against prior mortgage

of realty, *Chase v. Tacoma Box Co.* 11 W. 377.

Agreement by mortgage not to record for mortgagors' benefit will destroy his priority over subsequent bill of sale for antecedent debt, *Hall v. Matthews* 8 W. 467.

Party seeking to defeat mortgage of chattels included in realty must make timely objection, *Manhattan Trust Co. v. Seattle Coal & Iron Co.* 16 W. 499; 19 W. 493.

Mortgagee of subsequent purchaser with notice of prior unrecorded mortgage is not protected, *Hinchman v. Ry. Co.* 14 W. 349.

Taking of possession cures defective description or want of affidavit of good faith, *Reed v. Bank of Commerce* 8 W. 539.

Affidavit in past tense is good, *Vincent v. Snohqualmie Mill Co.* 7 W. 566.

Affidavit by husband is sufficient though mortgage executed by both spouses, *Harker v. Woolery* 10 W. 484.

Mortgage by insolvent debtor to creditor in excess of indebtedness to hinder creditors is void in toto *Hotaling Co. v. Clancy* 21 W. 1.

Can creditor repay innocent purchaser and attack mortgage? *Martin v. Matthews* 10 W. 176.

Mixed mortgage recorded as that of realty may be made good as to personalty—against persons acquiring title after record by properly verifying and recording as personalty mortgage, *Alltn v. American L. & T. Co. (C. C. A.)* 79 Fed. Rep. 695.

**§9748. Record. §1988.—2.** A mortgage of personal property must be recorded in the office of the county auditor of the county in which the mortgaged property is situated, in a book kept exclusively for that purpose. When personal property mortgaged is thereafter removed from the county in which it is situated, it is, as except between the parties to the mortgage, exempted from the operation thereof unless either:

First. The mortgagee within thirty days after such removal causes the mortgage to be recorded in the county to which the property has been removed; or

Second. The mortgage be recorded in the custom house; or

Third. The mortgagee within thirty days after such removal takes possession of the property, Provided, That a mortgage on any vessel or boat, or part of a vessel or boat, over twenty tons burden, shall be recorded in the office of the collector of customs, where such vessel is registered, enrolled or licensed and need not be recorded elsewhere.

Is not repealed by §9759—removal of property, *Merritt v. Russell & Co.* 44 W. 143.

Possession dispenses with record, *Brockway v. Abbott* 37 W. 263.

Mortgagee must follow property with record, removal without his knowledge will not avail him against purchaser with notice of the mortgage, *Turner v. Caldwell* 15 W. 274.

**§9749. Foreclosure. §1989.—3.** A mortgage of personal property, where a debt for the security of which the mortgage has been given, has become due, or if the debt is not yet due, and the mortgagee has reasonable ground to believe that his debt is insecure, and that by allowing the property longer to remain in the hands of the mortgagor, he would be in danger of losing his debt or security, may have the property taken from the possession of the mortgagor, and sold in the manner provided in this act.

Mortgage on half interest of co-owner does not authorize possession by mortgagee, *American Packing Co. v. Luketa* 98 W. 6.

Mortgagee in danger of losing security on the facts, *Case Threshing Mach. Co. v. Shroll* 100 W. 212.

Right to declare debt due is arbitrary right—requirements of notices—ten days, include the first and count the last day, *Allen v. Morris* 87 W. 268.

The maturity of notes secured by chattel mortgage not accelerated by an action, *Haggard v. Sanglin*, 69 W. 151.

Chattel foreclosure, use by mortgagee as custodian of sheriff—costs, *Edmonds v. Eubanks* 57 W. 529.

Tender of amount before foreclosure sale renders sale void—replevin—tender need not be kept good, *Thomas v. Seattle B. & M. Co.* 48 W. 560.

**§9750. Sale of Mortgagor's Interest—Notice. §1990.—4.** The interest of the mortgagor, subject, however, to the lien of the mortgagee, may be sold under any process of law, issuing out of any superior court or justice of the peace court, in this state: Provided, however, That if the party, who has said mortgage, reside in this state, or has an agent herein, and the same is known to the officer executing such process, he shall serve upon him or his agent personally, or by mailing to him, or to his agent, if their postoffice is known, a notification of the intended sale, at the time such mortgaged property is seized under said process, or within five days thereafter. Said property shall not be sold within less than thirty days after its seizure and the officer, executing such process, must post in three public places, near the place where the said property is to be sold, a notice of the time and place of such sale, at the time he seizes said property under said process.



Mortgagee five months after foreclosure can have order of sale or action for his rights though execution sale of property has intervened, mortgagee being present at sale and purchaser at sale having notice of foreclosure, *Hamilton v. Carter* 12 W. 511.

§9751. Foreclosure by Notice and Sale. §1991.—5. Any mortgage of personal property, when the debt to secure which the mortgage was given is due, may be foreclosed by notice and sale as herein provided; or it may be foreclosed by action in the superior court having jurisdiction in the county in which the property is situated.

Foreclosure by notice and sale cannot be collaterally attacked by replevin for irregularities, *Everett v. McCulloch* 102 W. 51.

Sheriff liable for making return in name other than purchaser at sale, *Larson v. Hodge* 100 W. 419.

Foreclosure as in realty foreclosures §8210.

Procedure valid and sheriff protected,

§9752. Notice. §1992.—6. The notice must contain a full description of the property mortgaged, together with time and place of sale, also a statement of the amount due, and must be signed by the mortgagee or his attorney.

§9753. — Service of. §1993.—7. Such notice shall be placed in the hands of the sheriff or other proper officer, and shall be personally served in the same manner as is provided by law for the service of a summons: Provided, That if the mortgagor cannot be found in the county where the mortgage is being foreclosed, it shall be necessary to advertise the notice or affidavit in a newspaper, but the general publication directed in the next section shall be sufficient service upon all the parties interested, and such notice shall be sufficient authority for the officer to take such property into his immediate possession.

Publication of notice to resident of state due process of law—return must show defendant cannot be found in county, *White v. Powers* 87 W. 502.

Constable cannot foreclose and he and mortgagee liable in conversion. Mortgagor's debt is not a set-off nor is foreclosure pro-

ceeding cause for abatement of action in conversion, *Pickle v. Smalley* 21 W. 473. Mortgagor's debt is set off if timely objection is not made, *Jacobson v. Aberdeen Packing Co.* 26 W. 175.

Against mortgagee in possession in interest of mortgagor reached by garnishment, *Marsh v. Wade* 1 W. 538. Notice to mortgagee is mandatory, but failure to give notice will not invalidate sale nor render sheriff liable if mortgagee not injured, *Byrd v. Forbes* 3 W. T. 318.

Mack v. Doak 50 W. 119.

Foreclosure held bad for want of proper service of notice—sheriff's sale was sale as agent of mortgagee and mortgagee not entitled to deficiency, *Mitchell Lewis & Staver Co. v. O'Neill* 16 W. 108.

Provision authorizing taking of possession by mortgagee does not authorize taking without process if mortgagee objects. *McClellan v. Gaston* 18 W. 472.

§9754. Notice of Sale. §1994.—8. After notice has been served upon the mortgagor, it must be published in the same manner, and for the same length of time as required in cases of the sale of like property on execution, and the sale shall be conducted in the same manner.

Sales of property on execution, §7905.

Bill of sale to assignee of attorney in fact for purchaser dying after sale, con-

veys no title, *Larson v. Anderson* 97 W. 484.

§9755. Title of Purchaser. §1995.—9. The purchaser shall take all interest which the mortgagor had in the said mortgaged property upon which the said mortgage operated.

§9756. Bill of Sale—Surplus. §1996.—10. The officer conducting the sale, shall execute to the purchaser a bill of sale of the property, which bill of sale shall be effectual to carry the whole title and interest purchased, and if any balance of the purchase price remain it shall be disposed of in the same manner as surplus proceeds of sales are on execution.

§9757. Case May Be Taken Into Court. §1997.—11. The right of the mortgagee to foreclose, as well as the amount claimed to be due may be contested by any person interested in so doing, and the proceedings may be transferred to the superior court, for which purpose an injunction may issue if necessary.

Receiver of corporation mortgagor is in same position as corporation and must make showing to resist foreclosure—showing insufficient, *Kidder v. Beavers* 33 W. 635.

Creditor to contest must show cause to

defeat mortgage and must have been creditor at time mortgage executed, *West Coast Grocery Co. v. Stinson* 13 W. 255.

Interference with order of the court is contempt. *State ex rel. Brown v. McFaul* 27 W. 286.

Injunction to restrain foreclosure of fraudulent mortgage, *Meacham v. Swarts* 2 W. T. 412.   
 Injunction not dissolved plaintiffs ex-  
 penses not recoverable—measure of damages, *Kitsap County Bank v. United States F. & G. Co.* 90 W. 12.  
 Cited 90 W. 12.

§9758. Foreclosure if Debt Not Due. §1998.—12. Where the debt is not due for which the mortgage is given, and the mortgagee has reasonable cause to believe that the mortgaged property will be destroyed, lost, or removed, he shall have the right to an immediate action in the superior court of the county having jurisdiction where the property is situated, for the recovery of his debt, and the court may make any order it may deem fit, in order to secure said property so as to make the same available for the satisfaction of said debt.

Conditions unchanged from time mortgage given, rumors of theft does not bring case within the statute. *Fitch v. Goetjen* 83 W. 355.

AN ACT relating to chattel mortgages, and the filing thereof, and repealing all laws in conflict therewith. Approved March 13, 1899. Laws '99 p 157.

§9759. Chattel Mortgages. §1. Mortgages may be made upon all kinds of personal property, and upon the rolling stock of a railroad company and upon all kinds of machinery, and upon boats and vessels, and upon portable mills and such like property and upon growing crops and upon crops before the seed thereof shall have been sown or planted; Provided, That the mortgaging of crops before the seed thereof shall have been sown or planted, for more than one year in advance, is hereby forbidden, and all securities or mortgages hereafter executed on such unsown or unplanted crops are declared void and of no effect, unless such crops are to be sown or planted within one year from the time of the execution of the mortgage.

Error in location of property does not defeat between the parties—prior in bankruptcy, *Otto v. England* 99 W. 529.

Assignment of "earnings and income" is not chattel mortgage requiring affidavit, *Heermans v. Blakeslee* 97 W. 647.

Priority of assignment for benefit of creditors and unrecorded mortgage—mortgage of general stock left in possession of mortgagor without application of funds void, *Keyes v. Sabin* 101 W. 618.

Second recording of removed property not provided for, but does not impliedly repeal §9746, *Merritt v. Russell & Co.* 44 W. 143.

Act does not repeal former laws relating to execution of mortgages *Mills v. Smith* 177 Fed. 652.

Execution is date of delivery—priority over later attachment—description sufficient if attaching creditor had notice—attorney's fee, *Fenby v. Hunt* 53 W. 127.

§9760. Filing of Mortgages. §2. Every such instrument within ten days from the time of the execution thereof shall be filed in the office of the county auditor of the county in which the mortgaged property is situated, and such auditor shall file all such instruments when presented for the purpose, upon the payment of the proper fees therefor, indorse thereon the time of reception, the number thereof, and shall enter in a suitable book to be provided by him at the expense of his county, with an alphabetical index thereto, used exclusively for that purpose, ruled into separate columns with appropriate heads: "The time of filing," "Name of mortgagor," "Name of mortgagee," "Date of instrument," "Amount secured," "When due," and "Date of release." An index to said book shall be kept in the manner required for indexing deeds to real estate, and the county auditor shall receive for the services required by this act the sum of fifteen cents for every instrument, and the moneys so collected shall be accounted for as other fees of his office. Such instrument shall remain on file for the inspection of the public.

Mortgage filed prior to bankruptcy good though not within 10 days, *In re Bolstad* 224 Fed. 283.

Chattel mortgage filed ten months after making and one maker had died is good against general creditors including judgment creditor of estate, *Spokane Merchants Assn. v. First National Bank* 86 W. 201.

Bill of sale with affidavit and not recorded within 10 days is of no effect against chattel mortgage—vague descrip-

tion good, *Bonneviere v. Cole* 90 W. 526.

Changing name of mortgagor by striking the word "The" immaterial—mortgagor's representations that there are no liens immaterial, *Puget Sound Realty Assn. v. Catlett* 83 W. 495.

A chattel mortgage for over \$300, if recorded, need not remain on file, in order to give notice, *Van Winkle v. Mitchum*, 66 W. 296.

Filing only necessary, *Averill Mach. Co. v. Allbritton* 51 W. 30.

§9761. Notice—Revival of Notice. §3. Every mortgage filed and indexed in pursuance of this act shall be held and considered to be full and



sufficient notice to all the world, of the existence and conditions thereof, but shall cease to be notice, as against creditors of the mortgagors and subsequent purchasers and mortgagees in good faith, after the expiration of the time such mortgage becomes due, unless before the expiration of two years after the time such mortgage becomes due, the mortgagee his agent or attorney, shall make and file as aforesaid an affidavit setting forth the amount due upon the mortgage, which affidavit shall be annexed to the instrument to which it relates and the auditor shall endorse on said affidavit the time it was filed.

Pipe embedded in land held by chattel mortgage—entry to remove, *Boeringa v. Perry* 96 W. 57.

newal of former, *Best v. Felger* 77 W. 115  
Mortgage unsatisfied is constructive notice, *University State Bank v. Steeves* 85 W. 55.

Subsequent mortgage valid subject to re-

**§9762. Successive Revivals.** §4. The effect of any such affidavit shall not continue beyond one year from the time when such mortgage would otherwise cease to be valid as against such creditors and subsequent purchasers and mortgagees in good faith; unless before the time when any such mortgage would otherwise cease to be valid, as aforesaid, a similar affidavit be filed and annexed as provided in the preceding section, and with like effect.

Contract naming vendor but not signed by him sufficient, *Jennings v. Schwartz* 86 W. 202, overruling, *id.* 82 W. 209.

**§9763. Form of Mortgage.** §5. That a mortgage contemplated by this act which is given to secure the sum of one hundred dollars or less, exclusive of interest and costs of foreclosure, may be made in substantially the following form:

This mortgage, made this .... day of .... in the year .... by A. B. of ....., mortgagor, to C. D. of ....., mortgagee,

Witnesseth: That the mortgagor mortgages to the mortgagee (here describe the property) as security for the payment to him of ..... dollars, on (or before) the .... day of ..... in the year ....., with interest thereon (or security for the payment of a note or obligation, describing it, etc.)

A. B.

Signed and delivered in the presence of:

E. F.

C. H.

**§9764. Mortgage May Be Recorded.** §6. That a mortgage given to secure the sum of \$300 or more exclusive of interest, costs and attorneys or counsel fees may be recorded and indexed with like force and effect as if this act had not been passed, but such mortgage or a copy thereof must also be filed and indexed as required by this act.

Mortgage recorded need not be placed on file, *Van Winkle v. Mitchum*, 66 W. 296.

**§9765. Property in Two Counties.** §7. That in case the property mortgaged exists in two or more counties, a copy of such mortgage may be filed in each of such counties with like force and effect as the original mortgage.

**§9766. How Record Satisfied.** §8. Whenever any mortgage, filed under the provisions of this act, has been paid, or the conditions thereof satisfied, the mortgagee, or his assignee or personal representatives shall make to the mortgagor, his assignee or personal representatives, a certificate in writing, under his hand, stating the date of the mortgage and a description of the property thereby mortgaged, and that the same has been discharged in full; and on delivering said certificate in writing to the officer with whom such mortgage is filed, the said officer shall deliver said mortgage to the person producing such certificate, on payment of the sum of ten cents for filing said certificate, and shall file said certificate in his office, endorsing thereon the true date of filing the same, and shall keep and preserve said certificate among the records in his office, and shall write the word "satisfied" with the date opposite to such mortgage, in the index in which such mortgages are entered under the heading "release."

## CONDITIONAL SALES.

AN ACT in relation to conditional sales and leases of personal property.

Approved March 10, 1893. Laws '93 p 253.

**§9767. Contracts to Be Filed within Ten Days.** §1. That all conditional sales of personal property, or leases thereof, containing a conditional right to purchase, where the property is placed in the possession of the vendee, shall be absolute as to all bona fide purchasers, pledgees, mortgagees, encumbrancers and subsequent creditors, whether or not such creditors have or claim a lien upon such property, unless within ten days after the taking of possession by the vendee, a memorandum of such sale, stating its terms and conditions and signed by the vendor and vendee, shall be filed in the auditor's office of the county, wherein, at the date of the vendee's taking possession of the property, the vendee resides. L. '15 276, R.&B. §3670.

Creditors claimed property against forfeited contract of vendee the sale not being recorded, *Pratt v. Scandinavian Am. Bank* 103 W. 134.

Sale valid in levy in abatement of house of prostitution, *Simon Plano Co. v. Fairfield* 103 W. 206.

Assignment for benefit of creditors prior to contract not recorded within ten days, *Keyes v. Sabin* 101 W. 618.

Conditional sale not filed vendee may prefer vendor as a creditor, *Secor v. Close* 83 W. 77.

Labor lienors prior to conditional sale not filed, *Cook v. Washington-Oregon Corporation* 84 W. 68.

Filing in county where property situated not being vendee's residence void as to subsequent creditors in good faith—mortgagee of vendee and his guarantor may assign mortgage on condition of his release as guarantor, *North Coast Dry Kiln Co. v. Montecoma Inv. Co.* 82 W. 247.

Consignment for sale on commission is not conditional sale within the statute—consignee's authority limited, *Eilers Music House v. Fairbanks* 80 W. 379.

Filing in county where property situated is not compliance—creditors mean lien creditors, *Malmo v. Washington Rendering Co.* 79 W. 534; affirmed, *Eilers Music House v. Ritner* 88 W. 218.

Statute does not apply to assignee for unsecured creditors, *Sunel v. Riggs* 93 W. 314.

If delivery in parts time of filing runs from delivery of last part, *Anderson v. Langford* 91 W. 176.

Logging engine is not railroad equipment and is subject to this section, *Brady & Son v. Bell* 94 W. 496.

Construction of state courts followed by federal courts, *In re Pacific Electric & Auto Co.* 224 Fed. 220.

Consigned property not subject to act, *In re Caldwell Mach. Co.* 215 Fed. 428.

Filing in county of situs of property rather than residence of corporation fatal, *In re United States Lum. Co.* 206 Fed. 236.

Printed name of seller insufficient, *In re Frankel* 225 Fed. 129.

Signing by printed name and that of salesman good, *In re Covington Lum. Co.* 225 Fed. 444.

Memorandum must be signed by seller or trustee in bankruptcy takes property, *In re Osborn* 196 Fed. 257.

Vendor recovered property from bankrupt's estate, *Woods v. Brunswick-Balke-Collender Co.* 190 Fed. 935.

Purchaser of vendee cannot rescind sale because bill not recorded, *Woods v. McIvor* 74 W. 359.

Cited 84 W. 419.

Conditional sale to a corporation, filed in a county, which is not the corporation's legal domicile, is of no effect as to creditors

of the vendee, *First Nat. Bank v. Wilcox*, 72 W. 473.

Vendor treated sale as absolute by taking note etc., *Winton Co. v. Broadway Auto Co.*, 65 W. 650.

Contract of conditional sale must be made before or at the time of delivery, and cannot be thereafter antedated and made to answer the purposes of a chattel mortgage, *Worley v. Metropolitan Motor Car Co.*, 72 W. 243.

Seller did not sign contract and failed to recover in bankruptcy, *In re Osborn*, 196 Fed. 257.

Vendor recovered property in bankruptcy, *Woods v. Brunswick, etc., Co.*, 190 Fed. 935.

Vendor may apply to have receiver surrender property—order dismissing appealable, *Sumner Iron Works v. Wolten* 61 W. 689.

Goods confused all may be replevined, *Hennig v. Claussen Brg. Ass'n* 44 W. 116.

Sale absolute if statute not complied with *American Multigraph etc. Co. v. Jones* 58 W. 619.

Sale not completed vendee's chattel mortgage held completed sale, *In re Commercial Bank* 57 W. 381.

Failure to record and delivery does not affect maritime lien, *Fairbanks-Morse Co. v. Union Bank etc. Co.* 55 W. 538.

Burden of proving actual notice of unrecorded conditional bill of sale—mortgage by vendee—payments by mortgagee *Scott v. Farnam* 55 W. 336.

Title passed to trustee in bankruptcy if sale not recorded, *Chilberg v. Smith* 174 Fed. 805.

Location of property incorrectly stated but description held good—burden of proof on bona fide purchaser, *Wittler Corbin Mach. Co. v. Martini* 47 W. 123.

Failure to file memorandum makes sale absolute, *Springer v. Ayer* 50 W. 642.

Conditional sale with terms of lease valid—forfeiture—notice to purchaser of vendor, *Kidder v. Wittler-Corbin Machinery Co.* 38 W. 179.

Jewelry sent to retailer on "memorandum," the retailer keeping such as he selects, is conditional sale, *Eisenberg v. Nichols* 22 W. 70; but if sent and are to be accepted as a whole at a certain time it is not and replevin will lie, *Rumpf v. Barto* 10 W. 382.

Under §7747 held that failure to record in time bill was valid when recorded except as to parties intervening, *Sayward v. Nunan* 6 W. 87.

Delivery of shingle bolts title not to pass and to be paid for at rate for shingles to be manufactured is not a conditional sale, *Peterson v. Woolery* 9 W. 390.

Title of act is sufficient—purchaser for pre-existing debt is purchaser in good



faith, Johnston v. Wood 19 W. 441.

Printed conditional sale with typewritten

Lease with rent reserved and right of condition for mortgage construed conditional sale, Edison General Elec. Co. v. Quinn v. Parke & Lacy Mach Co. 5 Walter 10 W. 14. W. 276.

§9768. Record. §2. It shall be the duty of the county auditor of the county wherein any such memorandum is presented to him for that purpose, to file all such instruments, upon payment of proper fees therefor, indorse thereon the time of reception, the number thereof, and he shall enter in a suitable book to be provided by him at the expense of his county, with an alphabetical index thereto, and exclusively for that purpose, ruled into separate columns with appropriate heads, "The time of filing," "Name of vendor," "Name of vendee," "Date of instrument," "Amount of purchase price," and "Date of release." An index of said book shall be kept in the manner required for indexing deeds to real estate, and the county auditor shall receive for the services required by this act the sum of twenty-five cents for each instrument, and the money so collected shall be accounted for as other fees of his office. Such instrument shall remain on file for the inspection of the public until full payment has been made thereon, and shall be satisfied or canceled in the same manner and upon payment of same fees as chattel mortgages are satisfied or canceled. L '03 6.

**AN ACT** relating to certain contracts for the conditional sale or lease of railroad equipment and rolling stock and providing for the recording thereof. Approved November 28, 1883. Laws '83 p 62.

§9769. Conditional Sale of Railroad Rolling Stock. §1. In any contract or, or for the sale of railroad equipment or rolling stocks it shall be lawful to agree that the title to the property sold or contracted to be sold, although deliverable immediately, or at any time or times subsequently, shall not vest in the purchaser until the purchase price shall be fully paid, or that the seller shall have and retain a lien thereon for the unpaid purchase money, and in any contract of or for the leasing of such property, it shall be lawful to stipulate for a conditional sale thereof at the termination of such lease, and that the rentals received may, as paid, be applied and treated as purchase money, and that the title to the property shall not vest in the lessee or vendee until the purchase price shall be paid in full, notwithstanding delivery to and possession by such lessee or vendee: Provided, That no such contract shall be valid as against any subsequent judgment, creditor, or any subsequent bona fide purchaser for value and without notice, unless,

First—The same shall be evidenced by an instrument duly acknowledged before some person authorized by law to take acknowledgments of deeds.

Second—Such instruments shall be filed for record in the office of the county auditor of the county in which, at the time of the execution thereof, is situated the principal office of the vendee or lessee within this state.

Third—Each locomotive, engine or car so sold, or contracted to be sold, or leased as aforesaid, shall have the name of the vendor or lessor plainly marked on each side thereof, followed by the word "owner" or "lessor," as the case may be.

Logging engine is not railroad equipment, etc., Brady & Son v. Bell 94 W. 496.

§9770. Record. §2. The contracts herein authorized shall be recorded by the said county recorder in the book of records of mortgages of real estate in said county, and on payment in full of purchase money, and the performance of the terms and conditions stipulated in any such contract a declaration in writing to that effect shall be made by the vendor or his assignee, which declaration may be made on the margin of the record of the contract attested by the said recorder, or it may be made by a separate instrument to be acknowledged and recorded as aforesaid, and for such services the county recorder shall be entitled to the fees provided by law for the recording of deeds and mortgages of real estate.

**CRIMES.**

Criminal code §8881.

**AN ACT to prevent the removal of fixtures or permanent improvements from real estate which is subject to mortgage or other liens, without the consent of the owner or holder of such liens, and providing a penalty for the violation thereof.** Approved March 13, 1899. Laws '99 p 122.

§9771. **Removal of Fixtures.** §1. That when any real estate in this state, is subject to or is security for, any mortgage, mortgages, lien, or liens, other than general liens arising under personal judgments, it shall be unlawful for any person who is the owner, mortgagor, lessee, or occupant, of such real estate to destroy or remove or to cause to be destroyed or removed from said real estate any fixtures, buildings, or permanent improvements, not including crops growing thereon, without having first obtained from the owners or holders of each and all of such mortgages or other liens, his or their written consent for such removal or destruction.

§9772. **—Penalty.** §2. Any person wilfully violating the provisions of this act, shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by imprisonment in the county jail for a period not to exceed six months, or by a fine of not more than five hundred dollars, or by both such fine and imprisonment.

**AN ACT to prevent the fraudulent disposition of mortgaged personal property and to provide punishment for violations thereof.** Approved March 9, 1893. General repeal. Laws '93 p 224.

§9773. **Removal of Chattels—Penalty.** §1. That any mortgagor of personal property or the successor in interest of such mortgagor, who, with intent to hinder, delay or defraud the mortgagee thereof or his or her assigns or legal representatives, shall injure or destroy such property or any part thereof, or shall conceal such property or any part thereof, or shall remove the same or any part thereof, from the county where it was situated at the date of the mortgage, before it is duly released, without the consent in writing of the mortgagee, or shall sell or dispose of the same or any interest therein where he parts with the possession thereof, without the consent in writing of the mortgagee, he shall be deemed guilty of a misdemeanor and upon conviction thereof, shall be punished by imprisonment in the county jail for a period not to exceed six months or by a fine of not more than twice the value of such property or by both such fine and imprisonment.

**MIXED.**

**'AN ACT' relating to the filing and recording of mixed chattel and real estate mortgages in the State of Washington, and curative provisions relative thereto.** Approved March 13, 1899. Laws '99 p 118.

§9774. **Record of Mixed Mortgages.** §1. Any mortgage upon property of a mixed character, consisting in part of real estate and in part of personal property, and particularly upon railroad property, in the State of Washington, shall be admitted to record and be recorded in the several counties wherein the property is located as a real estate mortgage when acknowledged in the manner provided by law, and the original of such mortgage or a copy thereof certified by the auditor of any county in the State of Washington wherein the original has been recorded may be filed in a file to be kept for that purpose in the office of the auditor of the county wherein such property is situated and said record and filing shall constitute notice to all persons of the existence of the mortgage lien provided for by said mortgage.



Prior to this act mixed mortgage executed and recorded as on realty would not hold personalty, *Radebaugh v. Tacoma etc. Co.* 8 W. 570.

Prior to statute mixed mortgage rec-

orded as that of realty was not void as to chattels and judgment creditor had priority, *Illinois Tr. & Sav. Bank v. Seattle Elec. Ry. & Power Co.* (C. C. A.) 82 Fed. Rep. 936.

**§9775. Form of Record. §2.** In case any mortgage covering mixed real estate and personal property has heretofore been or may hereafter be recorded in the record of mortgages of real estate, or in the record of chattel mortgages, and in case the affidavit required by law to be attached to chattel mortgages was not or shall not be recorded as a part of said chattel mortgage but has been or shall be afterwards recorded upon a separate page of said record and a reference made at the place of the original record of said real estate or chattel mortgage to the said affidavit stating the volume and page on which the same may be found, said record shall constitute notice from and after the date of the filing of said affidavit, the same as if the affidavit and mortgage had been recorded together at the same time and at the same place.

## PROBATE PROCEDURE

**ABSENTEE'S ESTATES §9776.**

**ACCOUNTS §9786.**

Actions by and against executors §7961.

**ADOPTION OF CHILDREN §9813.**

**ADVANCEMENT §9817.**

**APPEAL §9824.**

**CITATIONS §9825.**

**CLAIMS §9828.**

**CONSTRUCTION §9843.**

Corporate stock voted by fiduciary §4522.

Crimes, pretended heir—substitution of child §8923.

**DESCENT AND DISTRIBUTION §9847.**

**DRUNKARDS §9869.**

**ESCHEATS §9877.**

**EXECUTORS, etc. §9885.**

Actions by and against §7961.

**FAMILY, SUPPORT OF §9893.**

**GUARDIANS §9897.**

Inheritance taxes §7051.

**INVENTORY §9921.**

**JURISDICTION §9929.**

**LETTERS §9933.**

**NONINTERVENTION WILLS §9967.**

**PARTNERSHIPS §9970.**

**SALES AND MORTGAGES §9974.**

**SPECIAL ADMINISTRATORS §9999.**

**SPECIFIC PERFORMANCE §10005.**

State, acceptance of gifts of land—disposal of gifts and escheats §6426.

**VALIDATION §10012.**

**VENUE §10014.**

**WILLS, CONTEST OF §10017.**

Execution of §10021.

Foreign §10044.

Lost, etc., §10046.

Probate of §10048.

**AN ACT** to establish a code of probate law and procedure, including the making and probating of wills; administration of estates of deceased persons; appointment of guardians of the persons and estates of minors, insane and mentally incompetent persons and administering their estates and providing penalties for the violation of certain provisions of this act and repealing sections 1278 to 1340, both inclusive, sections 1372 to 1692, both inclusive, and sections 1694 and 1320-1 of Remington & Ballinger's Annotated Codes and Statutes of Washington, and section 1693 of Remington & Ballinger's Annotated Codes and Statutes of Washington in part, and all other laws or parts of laws in conflict therewith. Approved March 5, 1917. L. '17 p 642.

**FORMER LAWS:—GENERAL ACT '54** p 266, and generally '56-7 p 23, '58-9 p 7; wills '54 p 312; guardian and ward '54-5 p 14; estates of non-resident minors and insane '58-9 p 5.

**GENERAL ACT '59-60** p 165 and '60-61 p 61.

**GENERAL ACT '62-3** p 198, and '63-4 p

21; settlement of estates without administration '69 p 298.

**GENERAL ACT '73** p 252, and. '77 p 209; descent and distribution '75 p 53; adoption of children '75 p 110, '79 p 136; probate of foreign wills '77 p 284; drunkards '79 p 113.

**GENERAL ACT c81 §§1297-1686.**

### ABSENTEES ESTATES.

**Supplementary—AN ACT** relating to the management, control and disposition of property belonging to absentees. Approved March 8, 1915. Laws '15 p. 132.

**§9776. Petition for Court to Assume Control—Notice—Hearing—Appointment of Trustee. §1.** Whenever it shall be made to appear by petition to any

judge of the superior court of any county that there is property in such county, either real or personal, that requires care and attention, or is in such a condition that it is a menace to the public health, safety or welfare, or that the custodian of such property appointed by the owner thereof is either unable or unwilling to continue longer in the care and custody thereof, and that the owner of such property has absented himself from the county and that his whereabouts is unknown and cannot with reasonable diligence be ascertained, which petition shall state the name of the absent owner, his approximate age, his last known place of residence, the circumstances under which he left and the place to which he was going, if known, his business or occupation and his physical appearance and habits so far as known, the judge to whom such petition is presented shall set a time for hearing such petition not less than six weeks from the date of filing, and shall by order direct that a notice of such hearing be published for three successive weeks in a newspaper published in the county where such petition is filed and in such other counties and states as will in the judgment of the court be most likely to come to the attention of the absentee or of persons who may know his whereabouts, which notice shall state the object of the petition and the date of hearing, and set forth such facts and circumstances as in the judgment of the court will aid in identifying the absentee, and shall contain a request that all persons having knowledge concerning the absentee shall advise the court of the facts. If it shall appear at such hearing that the whereabouts of the absentee is unknown, but there is reason to believe that upon further investigation and inquiry he may be found, the judge may continue the hearing and order such inquiry and advertisement as will in his discretion be liable to disclose the whereabouts of the absentee, but when it shall appear to the judge at such hearing or any adjournment thereof that the whereabouts of the absentee cannot be ascertained, he shall appoint a suitable person resident of the county as trustee of such property, taking into consideration the character of the property and the fitness of such trustee to care for the same, preferring in such appointment the husband or wife of the absentee to his presumptive heirs, the presumptive heirs to kin more remote, the kin to strangers, and creditors to those who are not otherwise interested, provided they are fit persons to have the care and custody of the particular property in question and will accept the appointment and qualify as hereinafter provided.

**§9777. Inventory and Appraisal—Bond of Trustee.** §2. The trustee so appointed shall make, subscribe and file in the office of the clerk of the court an oath for the faithful performance of his duties, and shall, within such time as may be fixed by the judge, prepare and file an inventory of such property, and the judge shall thereupon appoint three disinterested and qualified persons to appraise such property, and report their appraisal to the court within such time as the court may fix. Upon the coming in of the inventory and appraisal, the judge shall fix the amount of the bond to be given by the trustee, which bond shall in no case be less than the appraised value of the personal property and the annual rents and profits of the real property, and the trustee shall thereupon file with the clerk of the court a good and sufficient bond in the amount fixed and with surety to be approved by the court, conditioned for the faithful performance of his duties as trustee, and for accounting for such property, its rents, issues, profits and increase.

**§9778. Reports of Trustee.** §3. The trustee shall, at the expiration of one year from the date of his appointment and annually thereafter and at such times as the court may direct, make and file a report and account of his trusteeship, setting forth specifically the amounts received and expended and the conditions of the property.

**§9779. Sale of Property—Income Applied—Compensation of Trustee.** §4. If the property or any part thereof be personal property of a perishable nature or property likely to deteriorate in value, or if necessary to pay debts against the absentee which have been duly approved and allowed in the same form and manner as provided for the approving and allowing of



claims against the estate of a deceased person the trustee may sell the same under order of the court so to do, at public or private sale, and upon such terms and notice as the court may direct, and shall hold the proceeds of such sale, after deducting the necessary expenses thereof, subject to the order of the court. The trustee is authorized and empowered to, by order of the court, expend the proceeds received from the sale of such property, and also the rents, issues and profits accruing therefrom in the care, maintenance and upkeep of the property, so long as the trusteeship shall continue, and the trustee shall receive out of such property such compensation for his services as may be fixed by the court.

**§9780. Removal or Resignation of Trustee.** §5. The court shall have the power to remove or to accept the resignation of such trustee and appoint another in his stead. At the termination of his trust, as hereinafter provided or in case of his resignation or removal, the trustee shall file a final account, which account shall be settled in the manner provided by law for settling the final accounts of administrators and guardians.

**§9781. Period of Trusteeship.** §6. Such trusteeship shall continue until such time as the owner of such property shall return or shall appoint a duly authorized agent or attorney in fact to care for such property, or until such time as the property shall be provisionally distributed to the presumptive heirs, or to the devisees and legatees of the absentee as hereinafter provided, or until such time as the property shall escheat to the state as hereinafter provided.

**§9782. Distribution—Presumption of Death—Will.** §7. Whenever the owner of such property shall have been absent from ~~the~~ county for the space of five years and his whereabouts are unknown, and cannot with reasonable diligence be ascertained, his presumptive heirs at law may apply to the court for an order of provisional distribution of such property, and to be let into provisional possession thereof: Provided, That such provisional distribution may be made at any time prior to the expiration of five years, when it shall be made to appear to the satisfaction of the court that there are strong presumptions that the absentee is dead: and in determining the question of presumptive death, the court shall take into consideration the habits of the absentee, the motives of and the circumstances surrounding the absence, and the reasons which may have prevented the absentee from being heard of. Notice of hearing upon application for provisional distribution shall be published in like manner as notices for the appointment of trustees are published. If the absentee left a will in the possession of any person such person shall present such will at the time of hearing of the application for provisional distribution and if it shall be made to appear to the court that the absentee has left a will and the person in possession thereof shall fail to present it, a citation shall issue requiring him so to do, and such will shall be opened, read, proven, filed and recorded in the case, as are the wills of decedents.

**§9783. Provisional Distribution—Bond of Distributees.** §8. If it shall appear to the ~~satisfaction~~ of the court upon the hearing of the application for provisional distribution that the absentee has been absent and his whereabouts unknown for the space of five years, or there are strong presumptions that he is dead, the court shall enter an ~~order~~ directing that the property in the hands of the trustee shall be provisionally distributed to the presumptive heirs, or to the devisees and legatees under the will, as the case may be, upon condition that such heirs, devisees and legatees respectively give and file in the court bonds with good and sufficient surety to be approved by the court, conditioned for the return of or accounting for the property provisionally distributed in case the absentee shall return and demand the same, which bonds shall be respectively in twice the amount of the value of the personal property distributed, and in ten times the amount of estimated annual rents, issues and profits of any real property so provisionally distributed.

**§9784. Final Distribution.** §9. Whenever the owner of such property shall have been absent from the county for a space of fifteen years and his whereabouts are unknown and cannot with reasonable diligence be ascer-

tained, his presumptive heirs-at-law or the legatees and devisees under the will, as the case may be, to whom the property has been provisionally distributed, may apply to the court for a decree of final distribution of such property and satisfaction, discharge and exoneration of the bonds given upon provisional distribution. Notice of hearing of such application shall be given in the same manner as notice of hearing of application for the appointment of trustee and for provisional distribution and if at the final hearing it shall appear to the satisfaction of the court that the owner of the property has been absent and unheard of for the space of fifteen years and his whereabouts are unknown, the court shall exonerate the bonds given on provisional distribution and enter a decree of final distribution, distributing the property to the presumptive heirs-at-law of the absentee or to his devisees and legatees, as the case may be.

**§9785. Final Settlement—Escheat.** §10. Whenever the owner of such property for which a trustee has been appointed under the provisions of this act shall have been absent and unheard of for a period of fifteen years and no presumptive heirs-at-law have appeared and applied for the provisional distribution of such property and no will of the absentee has been presented and proven, the trustee appointed under the provisions of this act shall apply to the court for a final settlement of his account and upon the settlement of such final account the property of the absentee shall be escheated in the manner provided by law for escheating property of persons who die intestate leaving no heirs.

## ACCOUNTS.

**XIX.—Accounts of Executors and Administrators and Payment of Debts.**

**§9786. Promise to Pay Decedent's Debts.** §154. No executor or administrator shall be chargeable upon any special promise to answer damages, or to pay the debts of the testator or intestate out of his own estate, unless the agreement for that purpose, or some memorandum or note thereof, is in writing and signed by such executor or administrator, or by some other person by him thereunto specially authorized.

Wife ordering funeral expenses does not bind her to pay without express promise—*der, Gates v. Herr* 102 W. 131.

estate must be exhausted, *Butterworth v. Administratrix not liable for funeral expense not presented within one year, Butterworth v. Bredemeyer* 89 W. 677.

Executors conditional promise to pay legacy conditional on court's order creates no liability the court not making the order—*If deposit made in bank as executor the executor not personally liable, In re Kohler's Estate* 15 W. 613.

**§9787. Chargeable with Whole Estate.** §155. Every executor and administrator shall be chargeable in his accounts with the whole estate of the deceased which may come into his possession. He shall not be responsible for loss or decrease or destruction of any of the property or effects of the estate, without his fault.

**§9788. Allowance of Expenses.** §156. He shall be allowed all necessary expenses in the care, management and settlement of the estate.

Executor has power to contract for necessary apple boxes. *Lamb Davis Lum. Co. v. Stowell* 96 W. 46.

**§9789. Uncollectible Debts—Purchase by Executor of Claims.** §157. No executor or administrator shall be accountable for any debts due the estate, if it shall appear that they remain uncollected without his fault. No executor or administrator shall purchase any claim against the estate he represents, but however the executor or administrator may make application to the court for permission to purchase certain claims, and if it appears to the court to be for the benefit of the estate that such purchase shall be made, the court may make an order allowing such claims and directing that the same may be purchased by the executor or administrator under such terms as the court shall order, and such claims shall thereafter be paid as are other claims, but the executor or administrator shall not profit thereby.

**§9790. Compensation of Executor, Administrator and Attorney.** §158. Where no compensation shall have been provided by will, or the executor shall renounce his claim thereto, he shall be allowed such compensation as to the court shall seem just and reasonable, based on the services ren-



dered; and the like compensation shall be allowed to administrators. In all cases where it is necessary for such executor or administrator to employ an attorney, such attorney shall be allowed such compensation as to the court shall seem just and reasonable.

Attorney fee of \$6,000 held reasonable, *Snook v. Kennedy* 103 W. 390.

Basis for computing and time of pay of executor, *In re Hagerty's Estate* 97 W. 491.

Trustee allowed current expenses. Fixing fees between co-trustees prior to final settlement irregular, *In re Cornett's Estate* 102 W. 254.

Agreement with administrator as to compensation will be enforced, *In re Tachis Estate* 90 W. 621.

Attorney's fees in investigating claims are chargeable items—amount, *In re Lichtenberg's Estate* 58 W. 585.

Attorney's fees held excessive, *Shufeldt v. Hughes* 55 W. 246.

Applies to non-intervention wills—waiver—attorney's fees, *Shufeldt v. Hughes* 55 W. 246.

Fees to be allowed on real property—

held not waived—when attorney's fees allowed, *Noble v. Whitten* 38 W. 262.

In case of double administration the administrator should be paid only in one and if there is no showing of value of realty he may not be allowed for that, *In re Mason's Estate* 26 W. 259.

Compensation shall be measured on value of realty at accounting, *Horton v. Barto* 17 W. 675.

Administrator acting as attorney is not entitled to pay as attorney though there is agreement with heirs, *Kunn's Appeal* 4 W. 534.

Court may find actual value of estate to fix compensation—will held to fix compensation rather than statute, *In re Smith's Estate* 18 W. 129.

Compensation is based on appraised value in absence of showing of actual value. *Wilbur v. Wilbur* 17 W. 683.

**§9791. Reports of Executors and Administrators.** §159. Within thirty days after the expiration of the time for filing of claims of creditors, the executor or administrator shall make, verify by his oath, and file with the clerk of the court a report of the affairs of the estate. Such report shall contain a statement of the claims filed and allowed and all those rejected, and if it be necessary to sell or mortgage any property for the purpose of paying debts or settling any obligations against the estate or expenses of administration or allowance to the family, he may in such report set out the facts showing such necessity and ask for such sale or mortgage; such report shall likewise state the amount of property, real and personal, which has come into his hands, and give a detailed statement of all sums collected by him, and of all sums paid out, and it shall state such other things and matters as may be proper or necessary to give the court full information regarding any transactions by him done or which should be done. Such executor or administrator may, however, make, verify, and file, prior to the expiration of the time for the presentation of claims, any reports which in his judgment would be proper or which the court may order to be made.

**§9792. Notice of Hearing—Settlement by Court.** §160. It shall not be necessary for the executor or administrator to give any notice of the hearing of any report prior to the final report, except as in [§9950] §64 provided, but the court may require notice of the hearing of any such report. If the court does not require such notice to be given, then at any time after ten days following the filing of any report, other than the final report, the court may hear and settle such report.

**§9793. Final Report and Petition for Distribution.** §161. When the estate shall be ready to be closed, such executor or administrator shall make, verify and file with the court his final report and petition for distribution. Such final report and petition shall, among other things, show that the estate is ready to be settled, and shall show any moneys collected since the previous report, and any property which may have come into the hands of the executor or administrator since his previous report, and debts paid, and generally the condition of the estate at that time. It shall likewise set out the names and addresses, as nearly as may be, of all the legatees and devisees in the event there shall have been a will, and the names and addresses, as nearly as may be, of all the heirs who may be entitled to share in such estate, and shall give a particular description of all the property of the estate remaining undisposed of, and shall set out such other matters as may tend to inform the court of the condition of the estate, and it may ask the court for a settlement of the estate and distribution of property and the discharge of the executor or administrator. If the executor or administrator has been discharged without having legally closed the

estate, or without having legally obtained an adjudication as to the heirs, or without having legally procured a decree of distribution or final settlement the court may in its discretion upon petition of any person interested, cause all such steps to be taken in such estate as were omitted or defective.

**§9794. Notice of Hearing.** §162. When such final report and petition for distribution, or either, shall have been filed, the court shall fix a day for the hearing of the same, which day must be at least twenty-five days subsequent to the day of the first publication and posting of notices of such hearing as hereinafter provided. Notice of the time and place fixed for such hearing shall be given by the executor or administrator by publishing the same at least once a week for three successive weeks preceding the time

**§9795. Hearing—Objection to Report—Decree of Distribution—Partition.** §163. Upon the date fixed for the hearing of such final report and petition for distribution, or either thereof, or any day to which such hearing may have been adjourned by the court, if the court be satisfied that the notice of the time and place of hearing has been given as provided herein, it may proceed to the hearing aforesaid. Any person interested may file objections to the said report and petition for distribution, or may appear at the time and place fixed for the hearing thereof and present his objections thereto. The court may take such testimony as to it appears proper or necessary to determine whether the estate is ready to be settled, and whether the transactions of the executor or administrator should be approved, and to determine who are the legatees or heirs or persons entitled to have the property distributed to them, and the court shall, if it approves such report, and finds the estate ready to be closed, cause to be entered a decree approving such report, find and adjudge the persons entitled to the remainder of the estate, and that all debts have been paid, and by such decree shall distribute the real and personal property to those entitled to the same. The court may, upon such final hearing, partition among the persons entitled thereto, the estate held in common and undivided, and designate and distribute their respective shares; or assign the whole or any part of said estate to one or more of the persons entitled to share therein. That the person or persons to whom said estate is assigned shall pay or secure to the other parties interested in said estate their just proportion of the value thereof as determined by the court from the appraisement, or from any other evidence which the court may require.

If it shall appear to the court at or prior to any final hearing that the estate cannot be fairly divided, then the whole or any part of said estate may be sold or mortgaged in the manner provided by law for the sale or mortgaging of property by executors or administrators and the proceeds thereof distributed to the persons entitled thereto as provided in the final decree. Upon the production of receipts from the beneficiaries or distributees for their portions of the estate, the court shall, if satisfied with the correctness thereof, adjudge the estate closed and discharge the executor or administrator.

The court shall have authority to make partition, distribution and settlement of all estates in any manner which to the court seems right and proper, to the end that such estates may be administered and distributed to the persons entitled thereto. No estate shall be partitioned, nor sale thereof made where partition is impracticable, except upon a hearing before the court and upon the testimony of at least three disinterested witnesses previously appointed by the court for the purpose of viewing such property to be partitioned or sold. The court shall fix the values of the several pieces or parcels to be partitioned at the time of making such order of partition or sale; and may order the property sold and the proceeds distributed, or may order partition and distribute the several pieces or parcels, subject to such charges or burdens as shall be proper and equitable. The provisions of this section shall be concurrent with and not in derogation of other existing statutes as to partition of property. L. '21 ch. 93.



dered; and the like compensation shall be allowed to administrators. In all cases where it is necessary for such executor or administrator to employ an attorney, such attorney shall be allowed such compensation as to the court shall seem just and reasonable.

Attorney fee of \$6,000 held reasonable. Snook v. Kennedy 103 W. 390.

Basis for computing and time of pay of executor, In re Hagerty's Estate 97 W. 491.

Trustee allowed current expenses. Fixing fees between co-trustees prior to final settlement irregular, In re Cornett's Estate 102 W. 254.

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held not waived—when attorney's fees allowed, Noble v. Whitten 38 W. 262.

In case of double administration the administrator should be paid only in one and if there is no showing of value of realty he may not be allowed for that, In re Mason's Estate 26 W. 259.

Compensation shall be measured on value of realty at accounting, Horton v. Barto 17 W. 675.

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**§9794. Notice of Hearing.** §162. When such final report and petition for distribution, or either, shall have been filed, the court shall fix a day for the hearing of the same, which day must be at least twenty-five days subsequent to the day of the first publication and posting of notices of such hearing as hereinafter provided. Notice of the time and place fixed for such hearing shall be given by the executor or administrator by publishing the same at least once a week for three successive weeks preceding the time fixed for such hearing, such publication to be in such paper as the court may order, and such notice shall be posted in three public places in the county at least twenty-five days preceding the time fixed for such hearing, and which shall state in substance that a final report and petition for distribution have, or either thereof has, been filed with the clerk of the court, and that the court is asked to settle such report, distribute the property to the heirs or persons entitled to the same, and discharge the executor or administrator, and it shall give the time and place fixed for the hearing of such final report and petition and shall be signed by the executor or administrator or the clerk of the court and be posted and published or caused to be posted and published as aforesaid. L. 19 ch. 31.

Decree of distribution on short notice void, *Teynor v. Heible* 74 W. 222; affirmed. 78 W. 309.

Any reasonable notice good — personal service 33 days and notice to agent, *Pontl v. Hoffman* 87 W. 137.

Personal notice to heirs not necessary for final distribution, *In re. Ostlund's Estate* 57 W. 359.

Distribution, necessity of getting juris-

diction of heirs and devisees, *Horton v. Barto* 57 W. 477.

Failure to give notice is fatal—when laches not chargeable to party attacking proceeding, *McGowan v. Smith* 22 W. 625.

Strict compliance as to notice not necessary where actual notice was given and parties appeared and asked for a continuance, *In re Bell's Est.*, 70 W. 498.

**§9795. Hearing—Objections to Report—Decree of Distribution.** §163. Upon the day fixed for the hearing of such final report and petition for distribution, or either thereof, or any day to which such hearing may have been adjourned by the court, if the court be satisfied that the notice of the time and place of hearing has been given as provided herein, it may proceed to the hearing aforesaid. Any person interested may file objections to the said report and petition for distribution, or may appear at the time and place fixed for the hearing thereof and present his objections thereto. The court may take such testimony as to it appears proper or necessary to determine whether the estate is ready to be settled, and whether the transactions of the executor or administrator should be approved, and to determine who are the legatees or heirs or persons entitled to have the property distributed to them, and the court shall, if it approves such report and find the estate ready to be closed, cause to be entered a decree approving such report, find and adjudge the persons entitled to the remainder of the estate, and that all debts have been paid, and by such decree shall distribute the real and personal property to those entitled to same, and direct the executor or administrator to deliver to the distributees their portions according to the provisions of such decree and to make return of his proceedings to the court, showing receipt by such distributees of their portions of the estate, which decree shall be final and conclusive as to all the world. Upon such return being made, the court shall, if satisfied of the correctness thereof, adjudge the estate closed and discharge the executor or administrator: Provided, however, The court may, in its discretion, distribute any property subject to any encumbrance thereon.

Conveyances by heirs prior to distribution sustained, *Demaris v. Barker* 33 W. 200.

Devisee conveyed and afterward partitioned according to will, having no right, *McGowan v. Smith* 22 W. 624.

Final distribution conclusive after one year—service by publication sustained—fraud—trust, *Krohn v. Hirsch* 81 W. 222.

Power to distribute includes power to determine distributee—distributee doubtful, *Reformed Presbyterian Church etc. v. McMillan* 31 W. 643.

In the partition of estates the probate court has equity powers, *Webster v. Seattle Trust Co.* 7 W. 650.

Decree of distribution is conclusive if any claims remain after remedy against



estate is exhausted action lies directly administrator on appeal, in re Doane's against distributees, Prefontaine v. Mc- Estate, 64 W. 303.  
Micken 16 W. 16. Approval of final account does not close

This section warrants review of pay of estate, Hazelton v. Bogardus 8 W. 102.

**§9796. Representation of Minor by Guardian.** §164. If there be any minor interested in the estate who has no legally appointed guardian, the court shall appoint some disinterested person to represent such minor, with reference to such final report and petition for distribution, who, on behalf of the minor, may contest the same as any other person interested might contest it, and who shall be allowed by the court reasonable compensation for his services.

Infants and guardian adverse guardian —notice held good, Potl v. Hoffman 87 W. ad litem appointed—agent for nonresidents 137.

**§9797. Appointment of Agent for Non-Resident Distributee.** §165. When any estate shall have been distributed by decree of the court, as provided in this chapter, to any person residing out of this state, and having no agent therein, and it shall be necessary that some person should be authorized to take possession and charge of the same for the benefit of such absent person, the court may appoint an agent for that purpose, and authorize him to take charge of such estate.

Is due process of law—agent acted in equity and redistribution—procedure in sales as in probate, Bickford v. Stewart 55 W. 278. Conditional discharge in advance may be vacated at any time—certiorari will not lie, State ex rel. Riser v. Superior Court 13 W. 25.

**§9798. Agent's Bond and Compensation.** §166. Such agent shall give a bond to the State of Washington, to be approved by the court, conditioned faithfully to manage and account for such estate, before he shall be authorized to receive the same, and the court appointing such agent may allow a reasonable sum out of the estate for his services and expenses.

**§9799. Sale of Unclaimed Share.** §167. When the estate shall have remained in the hands of the agent unclaimed for three years, it shall be sold under order of the court, and the proceeds, after deducting the expenses of the sale and allowance to the agent, to be fixed by the court, shall be paid into the county treasury. When the payment is made the agent shall take triplicate receipts, one of which he shall file with the county auditor, and another with the court.

**§9800. Liability of Agent.** §168. The agent shall be liable on his bond for the care and preservation of the estate while in his hands, and for the payment of the proceeds of sale as required by the preceding section, and may be sued thereon by any person interested.

**§9801. Claimant for Proceeds of Sale—Escheat to State.** §169. If any person shall within four years immediately following the payment of said money as aforesaid to the treasurer, appear and claim the money paid into the treasury, the court making the distribution, being first satisfied of his right, shall order the payment of such money, and, upon the presentation of a certified copy of the order to the county auditor, he shall draw his warrant on the county treasurer for the amount. If no such claim be made within the four year period last above mentioned the said money shall escheat to the state.

**§9802. Receipts for Expenses and Charges to Be Filed.** §170. In rendering his accounts or reports the executor or administrator shall produce receipts for the expenses and charges which he shall have paid, which receipts shall be filed and remain in court; however, he may be allowed any item of expenditure, not exceeding twenty dollars (\$20.00), for which no receipt is produced, if such item be supported by his own oath, but such allowances without receipts shall not exceed the sum of three hundred dollars (\$300.00) in any one estate.

**§9803. Order for Payment of Debts.** §171. The debts of the estate shall be paid in the following order:

1. Funeral expenses in such amount as the court shall order.

2. Expenses of the last sickness, in such amount as the court shall order.
3. Wages due for labor performed within sixty days immediately preceding the death of decedent.
4. Debts having preference by the laws of the United States.
5. Taxes, or any debts or dues owing to the state.
6. Judgments rendered against the deceased in his lifetime which are liens upon real estate on which executions might have been issued at the time of his death, and debts secured by mortgages in the order of their priority.
7. All other demands against the estate.

Compare lien statute §9735.

Mortgagee failing to establish mortgage is volunteer as to other liens paid, *Wagner v. Alderson* 91 W. 157.

Ordering claim paid out of insurance fund, if estate insolvent is error if claim has not priority, *In re Blattner's Estate* 92 W. 48.

Money held by deceased for special purpose held trust fund and entitled to priority, *In re Blattner's Estate* 92 W. 48.

Administratrix not liable for funeral expense claim not presented, *Butterworth v.*

*Bredemeyer* 89 W. 677.

Priority of physician's claim, *Cunningham v. Lakin* 50 W. 394.

Funeral expenses are debts limited if administration not had within six years, *In re Smith's Estate* 25 W. 539.

After debts paid father allowed expense of adult child's medical attendance and funeral expenses out of estate from his mother, *In re Murphy's Estate* 30 W. 9.

Claim of laborer for last sixty days' service ranks after funeral expenses and allowances to family, §9735.

**§9804. Mortgage and Judgment Preferences.** §172. The preference given in the preceding section to a mortgage or judgment shall only extend to the proceeds of the property subject to the lien of such mortgage or judgment.

**§9805. Allowance to Precede Payment.** §173. No claim against the estate shall be paid until the same shall first have been allowed by both the executor or administrator and the court.

**§9806. Payments in Case Estate Insufficient.** §174. If the estate shall be insufficient to pay the debts of any class, each creditor shall be paid in proportion to his claim, and no other creditor of any lower class shall receive any payment until all those of the preceding class shall have been fully paid.

**§9807. Expense of Monument Payable From Estate.** §175. Executors and administrators of the estate of any deceased person are hereby authorized, by and with the consent of the court, to expend a reasonable amount out of the estate of the decedent to erect a monument or tombstone suitable to mark the grave or crypt of the said decedent, and the expense thereof shall be paid as the expenses of administration are paid.

**§9808. Liability of Personal Representatives for Payment of Claims.** §176. Whenever a decree shall have been made by the court for the payment of creditors, the executor or administrator shall be personally liable to each creditor for his claim or the dividend thereon, except when his inability to make the payment thereof from the property of the estate shall result without fault upon his part. The executor or administrator shall likewise be liable on his bond to each creditor.

**§9809. Actions on Unpaid Claim—Actions for Contributions.** §177. If, after the accounts of the executor or administrator have been settled and the property distributed, it shall appear that there is a creditor or creditors whose claim or claims have been duly filed and not paid or disallowed, the said claim or claims shall not be a lien upon any of the property distributed, but the said creditor or creditors shall have a cause of action against the executor or administrator and his bond, for such an amount as such creditor or creditors would have been entitled to receive had the said claim been duly allowed and paid, and shall also have a cause of action against the distributees and creditors for a contribution from them in proportion to the amount which they have received. If the executor or administrator or his sureties be required to make any payment in this section provided for, he or they shall have a right of action against said distributees and creditors to compel them to contribute their just share.



Distributee cannot be sued as trustee for rightful distributee, *Doble v. State* 95 W. 62.

**§9810. Order Maturing Claim Not Due.** §178. If there be any claim not due the court may in his discretion, after hearing upon such notice as may be determined by it, mature such claim and direct that the same be paid in the due course of the administration.

Claim not due or contingent shall be presented within one year, *Barto v. Stewart* 21 W. 605.

**§9811. Contingent and Disputed Claims.** §179. If there be any contingent or disputed claim against the estate, the amount thereof, or such part thereof as the holder would be entitled to, if the claim were established or absolute, shall be paid into the court, where it shall remain to be paid over to the party when he shall become entitled thereto; or if he fail to establish his claim, to be paid over or distributed as the circumstances of the case may require.

**§9812. Issuance of Letters After Final Settlement.** §180. A final settlement of the estate shall not prevent a subsequent issuance of letters of administration, should other property of the estate be discovered, or if it should become necessary and proper from any cause that letters should be again issued.

## ADOPTION.

**§9813. Who May Adopt Child.** §1667. Any inhabitant of this State, not married, or any husband and wife jointly, may petition the superior court of their proper county for leave to adopt and change the name if desired, of any child under the age of twenty-one years, but a written consent must be given to such adoption by the child, if of the age of fourteen years, and by each of his or her living parents who is not hopelessly insane or a confirmed drunkard. If there be no such parents, or if the parents be unknown, or shall have abandoned such child, or if such parents, or either of them, are hopelessly insane, or a confirmed drunkard, then by the legal guardian; if there be no such guardian, then by a discreet and suitable person appointed by said court to act in the proceedings as the next friend of such child: ~~Pro-~~vided however, That if the parents are living separate and apart, the consent of both is not required, but such consent may be given by the parent having the care, custody and control of such child: And provided further, That either spouse may adopt a child of the other. L '05 296.

Consent of divorced father, with right to visit child, must be had, *In re Lease* 99 W. 413.

Charitable societies, rights in care of children §585.

Divorced father not entitled to notice of adoption of child awarded to mother—fraud—application to set aside adoption—fitness of adopting parent, *In re Beers* Adoption 78 W. 576.

Child abandoned, parent's consent unnecessary—mother wrote turning over "my right and title" to illegitimate child, *In re Potter* 85 W. 617.

Consent of both parents required where no guardian—no abandonment, *State ex rel. Le Brook v. Wheeler* 43 W. 183.

Courts have no jurisdiction of application of non-resident—welfare of child, *King v. Gallaway* 42 W. 413.

**§9814. Examination of Wife.** §1668.—372. That, if the petition be filed by husband and wife, the court shall examine the wife separate and apart from her husband, and shall refuse leave for such adoption, unless the court shall be satisfied, from such examination that the wife of her own free will and accord desires such adoption.

**§9815. Showing to Be Made.** §1669.—373. That, upon the compliance with the foregoing provisions, if the court shall be satisfied of the ability of the petitioner, or petitioners, to bring up and educate the child properly, having reference to the degree and condition of the child's parents, and shall be satisfied of the fitness and propriety of such adoption, the court shall make an order setting forth the facts, and declaring that, from that date, such child, to all legal intents and purposes, is the child of the petitioner or petitioners, and that the name of the child is hereby changed.

Decree will be reversed only for abuse of discretion—adoption and guardianship, *In re Wells* 60 W. 518.

**§9816. Effect of Adoption.** §1670.—374. That by such order the natural parents shall be divested of all legal rights and obligations in respect to such child, and the child shall be free from all legal obligations of obedience and maintenance in respect to them, and shall be, to all intents and purposes, the child and legal heir of his or her adopter or adopters, entitled to all the rights and privileges and subject to all the obligations of a child of the adopter or adopters begotten in lawful wedlock: Provided, That on the decease of parents who have adopted a child or children under this act and the subsequent decease of such child or children without issue, the property of such adopting parents shall descend to their next of kin, and not to the next of kin of such adopted child or children.

Natural mother consented forever relin- 48.

quishes right even after death of adopting Child omitted from will takes as natural parents, In re Masterson's Estate 45 W. child, Van Brocklin v. Wood 38 W. 384.

## ADVANCEMENT.

### XX.—Distribution Prior to Settlement and Advancement.

**§9817. Application for Premature Distribution.** §181. At any time after six months from the date of the first publication of notice to creditors, any heir, legatee, or devisee, may present his petition to the court praying that the legacy or share of the estate to which he is entitled may be given to him, upon his giving bond with security for the payment of his proportion of the debts of the estate, inheritance tax, expenses of administration, support of the family, or other obligations of the estate.

**§9818. Notice.** §182. Notice of the application shall be given to the executor or administrator and to all persons interested in the estate in the same manner that notice is required to be given of the settlement of the final account of the executor or administrator and petition for distribution.

**§9819. Resistance of Application.** §183. The executor, administrator, or any person interested in the estate may appear and resist the application; or any other heir, legatee, or devisee may make a similar application for himself.

**§9820. Order Setting Off Share of Estate—Bond to Secure Payment of Debts.** §184. If, on the hearing of such petition or petitions, it appear to the court that the estate is but little in debt and that the shares of the parties applying may be allowed and set off to him or them without injury to the creditors of the estate, the court may make a decree establishing such petitioner or petitioners to be heirs or legatees or devisees and set off to him or them by a decree his or her portion of such estate: Provided, Each one of them shall first execute and deliver to the executor or administrator a bond in such sum as may be designated by the court, and with sureties to be approved by the court, which bond shall be conditioned for the payment by the devisee or legatee or heir, whenever required, of his portion of the debts, expenses of administration, inheritance tax, allowance to the family and other obligations of the estate.

**§9821. Costs.** §185. The cost of the proceedings authorized by the preceding section shall be paid by the applicant, or if there be more than one, shall be equally apportioned among them.

**§9822. Enforcing Repayment by Distributee.** §186. Whenever any bond has been executed and delivered under the provisions of the preceding sections and the court shall determine that it is proper and necessary to require payment of any part of the money thereby secured, he may make an order requiring the payment and direct the executor or administrator to take such proceedings as may be necessary to enforce such payments, and such executor or administrator may, if the court so order, institute suit on the said bond for the collection of such sums.



**§9823. Advancements, Determination of. §187.** All questions as to advancements made, or alleged to have been made, by the deceased to any heirs may be heard and determined by the court before any distribution is made as in this act provided and the same shall be specified in the decree of distribution.

### APPEAL.

**§9824. Appeals to Supreme Court. §221.** Any interested party may appeal to the supreme court from any final order, judgment or decree of the court, and such appeals shall be in the manner and way provided by law for appeals in civil actions.

### CITATIONS AND NOTICES.

#### II.—Notices and Citations.

**§9825. Notices, Manner of Giving. §3.** Whenever personal notice is required to be given to any party to a proceeding in matters of probate, and other proceedings under this act, and no other mode of giving notice is prescribed, it may be given in the manner required for the service of summons in civil actions or by citation issued from the court, signed by the clerk and under the seal of the court, directed to the sheriff of the proper county, requiring him to cite such person to appear before the court or judge, as the case may be, at a time and place to be named in such citation. In the body of the citation shall be briefly stated the nature or character of the proceedings.

Administrator resigning is not entitled misconduct, *In re Dietrick's Estate* 39 W. to citation when his removal is had for 520.

**§9826. Service. §4.** The officer to whom the citation is directed shall serve it by delivering a copy to the person or persons named therein, and shall return the original to the court according to its direction, indorsing thereon the time and manner of service.

Citation returnable on day it was issued for jurisdiction, *In re Sullivan's Estate* 40 in proof of nuncupative will, does not con- W. 202.

**§9827. Time of Service. §5.** In all cases in which citations are issued from the superior court in probate and other proceedings under this act, they shall be served at least ten days before the time at which they are made returnable, except when issued from the court in cases where the law requires the judge to issue them upon his own motion, and he does so issue them; and in such cases they shall be served in sufficient time to allow the person served to be in attendance on the court.

### CLAIMS.

#### XVI.—Claims Against Estate.

**§9828. Notice to Creditors—Limitation—When Notice May Be Omitted. §107.** Every executor or administrator shall, immediately after his appointment, cause to be published in some newspaper printed in the county, if there be one, if not, then in such newspaper as may be designated by the court, a notice that he has been appointed and has qualified as such executor or administrator, and therewith a notice to the creditors of the deceased, requiring all persons having claims against the deceased to serve the same on the executor or administrator or his attorney of record, and file with the clerk of the court, together with proof of such service, within six months after the date of the first publication of such notice. Such notice shall be published not less than once in each week for three successive weeks, or for such further time as the court may direct. If a claim be not filed within the time aforesaid, it shall be barred. Proof by affidavit of the publisher of the publication of such notice shall be filed with the court: Provided, however, In cases where all the property is awarded to the widow, husband or children as in this act provided, the notice to creditors herein provided for may be omitted.

Second claim of items not included in first may be filed—gratuity by relative, *In re Spark's Estate* 101 W. 462.  
*re Parke's Estate* 101 W. 659. Action for deceit will lie against execu-

trix representing estate as insolvent to prevent filing of claim, *Kennedy v. Burr* 101 W. 61.

Oral promises of deceased in another state not admissible in support of claim based on promise in his state though services the same, *Zuhn v. Horst* 100 W. 359.

Foster son's claim sustained on the facts, *Olsen v. Hagen* 102 W. 321.

Informal presentment and delay held no presentment, *In re King's Estate* 102 W. 299.

Compromise of claims due the estate, §9890.

Funeral expense is claim within the statute, *Butterworth v. Bredemeyer* 89 W. 677.

Applies to claim against estate of deceased guardian, *Newberry v. Wilkenson* 190 Fed. 62, affirmed 199 Fed. 673.

Claim not known is barred, *Harvey v. Pocock* 92 W. 625.

Law of other state presumed same, hence foreign claim not barred if notice to creditors not shown, *Plath v. Mullins* 87 W. 403.

Notice is from first publication—number of publications properly ordered after first was made, *Seattle Nat. Bank v. Dickinson*, 72 W. 403.

An order may be taken any time before final settlement, *Seattle Nat'l Bank v. Dickinson*, 72 W. 403.

Notice bars claims in federal court of equity—claim against guardians' bond failed, *Newberry v. Wilkinson*, 190 Fed. 62; affirmed 199 Fed. 673.

"Claim" includes right of ward against deceased guardian, *Newberry v. Wilkinson*, 199 Fed. 673.

Mortgagee to secure indemnity bond need not file claim, *Macdonald v. O'Shea* 58 W. 169.

Failure to provide payment for services by will as agreed action on quantum meruit lies, *Pelton v. Smith* 50 W. 459.

**§9829. Affidavit of Claimant. §108.** Every claim served and filed as above provided shall be supported by the affidavit of the claimant that the amount is justly due, that no payments have been made thereon, and that there are no offsets to the same to the knowledge of the claimant.

Abstract of judgment must be verified—executor cannot waive filing claim—claim for contribution as surety on supersedeas bond, *Empson v. Fortune* 102 W. 16.

Claim by executrix, sole legatee individually in proper form under nonintervention will. *Harvey v. Pocock* 100 W. 263.

Affidavit and vouchers if demanded are sufficient, *McFarland v. Fairlamb* 18 W.

**§9830. Allowance and Rejection of Claims—Failure to Act. §109.** When a claim, accompanied by the affidavit required in the preceding section has been served and filed, it shall be the duty of the executor or administrator to endorse thereon his allowance or rejection, with the day and date thereof. If he allow the claim, it shall be presented to the judge of the court, who shall in the same manner indorse on it his allowance or rejection. If the executor or administrator reject the claim in whole or in part, he shall notify the claimant forthwith of said rejection and file in the office of the clerk an affidavit showing such notification and the date thereof. Such notification shall be by personal service or registered mail. If the executor or administrator shall neglect for the period of sixty days after service upon him or his attorney to act upon any such claim, the claimant may take the matter up before the court and the court may require the executor or administrator to act on such claim and in its discretion may impose costs and attorney's fees.

Rejection of claim by the court is not adjudication pleadable in bar United

Adjudication of solvency need not precede notice to creditors, *Strand v. Stewart* 51 W. 685.

Notice to creditors, name of administrator signed by attorney sufficient, *Meikle v. Cloquet* 44 W. 513.

This section does not extend statute of limitations, *Bank of Montreal v. Buchanan* 32 W. 480.

Notice not necessary under non-intervention will *Moon v. Kirkman* 19 W. 605.

Claims must be presented before action though notice not given, *McFarland v. Fairlamb* 18 W. 601.

Mechanics' lien claim must be presented before action, *Casey v. Ault* 4 W. 167.

Contingent claim must be presented within time, *Barto v. Stewart* 21 W. 605.

Failure to present judgment will not defeat appeal, *Strong v. Eldridge* 8 W. 595.

Mortgage claim must be presented if deficiency is claimed or if sale is sought in administration, *Scannon v. Ward* 1 W. 179.

Demand for equitable relief or unliquidated damages need not be presented, *Nels v. Farquharson* 9 W. 508.

Want of presentment cannot be urged in first instance on appeal, *Id.*

Attorney of administrator refusing to attend to claim no excuse for not presenting in time *Meikle v. Cloquet* 44 W. 513.

Statute runs from filing of executor's bond—failure of executor to act is not excuse, *Bank of Montreal v. Buchanan* 32 W. 480.

Failure to present guaranteed claim to executor of principal guarantor will not discharge surety. *Donnerberg v. Oppenheimer* 15 W. 290.

Statute does not apply to claims not in existence, *In re Macdonald's Estate* 29 W. 422.

601; *First Nat. Bank v. Root* 19 W. 111.

Copy of verification of claim is insufficient to verify, *Ash v. Clark* 32 W. 390.

Executor may demand papers for examination, *First National Bank v. Root* 19 W. 111.

Rejected claim and original both admissible in evidence, *Id.*



**States v. Fidelity Co. (C. C. A.)** 121 Fed. appeal, *In re Alfstad's Estate* 27 W. 175. Rep. 766.

Record must show grounds and evidence executors does not waive, *Seattle Nat. Bank v. Dickinson*, 72 W. 403.

**§9831. Effect of Allowance of Claim.** §110. Every claim which has been allowed by the executor or the administrator and the said judge, shall be ranked among the acknowledged debts of the estate to be paid in the course of administration.

**§9832. Judge as Creditor of Estate.** §111. Any judge of a court may present a claim against the estate of any decedent for allowance; and if the executor or administrator allows such claim, he shall, in writing, designate some other judge of the superior court, who shall have the same power to allow or reject it as he would have, had letters issued in his court; and the claimant shall have, in the event of his claim being rejected, all the rights incident to any other creditor against the estate.

**§9833. Suit on Rejected Claims.** §112. When a claim is rejected by either the executor, administrator, or the court, the holder must bring suit in the proper court against the executor or administrator within thirty days after notification of the rejection, otherwise the claim shall be forever barred.

Complaint at variance with claim presented is fatal, *Zuhn v. Horst* 100 W. 359. *Bank v. Lilly*, 66 W. 309.

Complaint must be filed within three months after rejection of a claim, *Farmers* Does not apply to claims against incompetents, *Clough v. Monro* 86 W. 507.

**§9834. No Allowance of Barred Claims.** §113. No claim shall be allowed by the executor, administrator, or court which is barred by the statute of limitations.

**§9835. Necessity of Presentation of Claims.** §114. No holder of any claim against an estate shall maintain an action thereon, unless the claim shall have been first presented as herein provided.

Claim for funeral expense not presented within one year barred—administratrix not liable, *Butterworth v. Bredemeyer* 89 W. 677. *& Co. v. Adkinson Construction Co.*, 67 W. 420.

Presentation of claim condition precedent to action, *Harvey v. Pocoek* 92 W. 625. The presentation of a claim to a special administrator is not sufficient, *Ward v. Magaha*, 71 W. 679.

Claim legally presented by mailing and receipt by executrix, *Gray v. Hickey* 94 W. 370. Temporary absence of or promises by executor will not excuse failure to make actual presentation, *Seattle Bank v. Dickinson*, 72 W. 403.

Claims in cases of inchoate liens must be presented, *Gray v. Hickey* 94 W. 370. Claim on appeal need not be presented, *Strong v. Eldgridge* 8 W. 595; *Megrath v. Gilmore* 15 W. 558; joint debtors will not be released, *id.*

**§9836. When Bar of Statute Not to Run.** §115. The time during which there shall be a vacancy in the administration shall not be included in any limitations herein prescribed.

**§9837. Actions Pending at Death—Substitution.** §116. If any action be pending against the testator or intestate at the time of his death, the plaintiff shall within ninety days after first publication of notice to creditors, serve on the executor or administrator a motion to have such executor or administrator, as such, substituted as defendant in such action, and, upon the hearing of such motion, such executor or administrator shall be so substituted, unless, at or prior to such hearing, the claim of plaintiff, together with costs, be allowed by the executor or administrator and the court. After the substitution of such executor or administrator, the court shall proceed to hear and determine the action as in other civil cases.

Applies to superior court and does not repeal §7328 relating to substitution in supreme court, *Mohney v. Davis* 102 W. 158.

**§9838. Partial Allowance of Claim.** §117. Whenever any claim shall have been filed and presented to an executor or administrator and the court, and a part thereof shall be allowed, the amount of such allowance shall be stated in the indorsement. If the creditor shall refuse to accept the amount so allowed in satisfaction of his claim, he shall recover no costs in any action he may bring against the executor or administrator, unless he shall recover a greater amount than that offered to be allowed, exclusive of interest and costs.

In action for conversion judgment to be satisfied as other claims, *Collins v. Denny Clay Co.* 41 W. 136.

**§9839. Effect of Judgment Against Executor.** §118. The effect of any judgment rendered against any executor or administrator shall be only to establish the amount of the judgment as an allowed claim.

Judgment for costs against administrator is only claim, *In re Richardson's Estate* 97 W. 488. closure on unrecorded chattel mortgage, *Spokane Merchants Assn. v. First National Bank* 86 W. 367.

Judgment should contain directions for payment—amendment on appeal, *Spokane v. Costello* 57 W. 183. After partition lien of judgment extinct—mortgagee foreclosing cannot take deficiency judgment, *Denton v. Maple* 92 W. 290.

**§9840. Judgment Against Decedent to Be Presented as Claim.** §119. When any judgment has been rendered against the testator or intestate in his lifetime, no execution shall issue thereon after his death, but it shall be presented to the executor or administrator, as any other claim, but need not be supported by the affidavit of the claimant, and if justly due and unsatisfied, shall be paid in due course of administration: Provided, however, That if it be a lien on any property of the deceased, the same may be sold for the satisfaction thereof, and the officer making the sale shall account to the executor or administrator for any surplus in his hands.

Community judgment properly filed as claim in probate of wife's estate, *First Nat. Bank v. Cunningham*, 72 W. 532.

**§9841. Claims of Personal Representatives.** §120. If the executor or administrator is himself a creditor of the testator or intestate, his claim, duly authenticated by affidavit, shall be filed and presented for allowance or rejection to the judge of the court, and its allowance by the judge shall be sufficient evidence of its correctness. This section shall apply to non-intervention and all other wills.

Court cannot pass on claim of executor nonintervention will, *Schubach v. Redelsheimer* 92 W. 124. claim (1890)—remedy is by action and if judge has rejected administrator's claim he must resign if he brings action, *Wilkins v. Wilkins* 1 W. 87.

No appeal lies from order rejecting

**§9842. Resignation or Removal of Executor or Administrator—Deduction of Time.** §121. In case of resignation or removal for any cause of any executor or administrator, and the appointment of another or others, after notice has been given by publication as required by law, by such executor or administrator first appointed, to persons to file their claims against the estate, it shall be the duty of the judge of the court to cause notice of such resignation or removal and such new appointment to be published two successive weeks in the same newspaper in which the original notice was published, if the publication of such paper is at the time continued, and if not, then in some other newspaper published in the county, or if there be no newspaper published in such county, then in a newspaper published in the state and of general circulation in the county, but the time between the resignation or removal and such publication shall be deducted from the time within which claims shall be filed unless such time shall have expired before such resignation or removal.

## CONSTRUCTION.

This chapter, a part of Code 1881, was not repealed by Probate Code 1917. at §1351. §9776.

**§9843. Act Is Continuation of Former Laws.** §1681.—385. The provisions of this act, so far as they are substantially the same as existing statutes, must be construed as continuations thereof, and not as new enactments.

**§9844. Former Laws Repealed.** §1684.—388. No statute, law, or rule is continued in force because it is consistent with the provisions of this act on the same subject; but in all cases provided for by this act, all statutes, laws and rules heretofore in force in this state, whether consistent or not with the provisions of this act, unless expressly continued in force by it, are repealed, and abrogated.

**§9845. Repeal Does Not Revive Former Law.** §1685.—389. This repeal, or abrogation does not revive any former law heretofore repealed, nor does it affect any right already existing or accrued, or any action or pro-



ceeding already taken, except as in this act provided, nor does it affect any private statute not expressly repealed.

§9846. **Act Shall Be Liberally Construed.** §1686.—390. The provisions of this act shall be liberally construed, and shall not be limited by any rule of strict construction.

### DESCENT AND DISTRIBUTION.

Supplementary—**AN ACT** to regulate the descent of real estate and the distribution of personal property. Approved December 1, 1881. General Repeal. C81 §§3302-17.

§9847. **Descent of Realty.** §3302.—1. When any person shall die seized of any lands, tenements or hereditaments, or any right thereto, or entitled to any interest therein, in fee simple, or for the life of another, not having devised the same, they shall descend subject to debts as follows:

First—If the decedent leaves a surviving husband or wife and only one child, or the lawful issue of one child, in equal shares to the surviving husband, or wife and child, or issue of such child. If the decedent leaves a ~~surviving~~ husband or wife, and more than one child living or one child living, and the lawful issue of one or more deceased children, one-third to the surviving husband or wife, and the remainder in equal shares to his children and to the lawful issue of any deceased child by right of representation. If there be no child of the decedent living at his death, the remainder goes to all of his lineal descendants; and if all the descendants are in the same degree of kindred to the decedent, they share equally, otherwise they take according to the right of representation.

Second—If the decedent leaves no issue, the estate goes in equal shares to the surviving husband or wife, and to the decedent's father and mother, if both survive. If there be no father nor mother, then one-half goes in equal shares to the brothers and sisters of the decedent and to the children of any deceased brothers or sisters, by right of representation. If decedent leaves no issue, nor husband, nor wife, the estate must go to his father and mother.

Third—If there be no issue, nor husband nor wife, nor father and mother, nor either, then in equal shares to the brothers and sisters of the decedent, and to the children of any deceased brother or sister, by right of representation.

Fourth—If the decedent leaves a surviving husband or wife and no issue, and no father nor mother, nor brother, nor sister, the whole estate goes to the surviving husband or wife.

Fifth—If the decedent leaves no issue, nor husband, nor wife, and no father nor mother, nor brother nor sister, the estate must go to the next of kin, in equal degree, excepting that when there are two or more collateral kindred in equal degree, but claiming through different ancestors, those who claimed through the nearest ancestor must be preferred to those claiming through an ancestor more remote, however.

Sixth—If the decedent leaves several children or one child and the issue of one or more other children, and any such surviving child dies under age, and not having been married, all the estate that comes to the deceased child by inheritance from such decedent, descends in equal shares to the other children of the same parent, and to the issue of any such other children who are dead, by right of representation.

Seventh—If at the death of such child, who dies under age, not having been married, all the other children of his parents are also dead, and any of them have left issue, the estate that came to such child by inheritance from his parent, descends to the issue of all other children of the same parent; and if all the issue are in the same degree of kindred to the child, they share the estate equally, otherwise they take according to the right of representation.

Eighth—If the decedent leaves no husband, wife or kindred, the estate escheats to the state, for the support of common schools, in the county in which the decedent resided during lifetime, or where the estate may be situated.

Realty escheats to state when §9877.

slon, Wendler v. Woodward 93 W. 684.

Administrator may defend his possession re Roberts' Estate 84 W. 163.

Wife's devise to husband for life or until married again remainder to her children is superior to gift of husband to second wife, *Payssee v. Payssee* 86 W. 349.

Escheats go to state school fund, later act, §9883.

Minor intestate without issue, mother's estate goes to sisters, *Eckert v. Schmitt* 60 W. 23.

Construction in case no brother nor sister surviving, *Sweetland v. Transberg* 176 Fed. 641.

First cousins take to exclusion of second cousins—proof—accounts and distribution, *In re Sullivan's Estate* 48 W. 631.

Property in two counties one court adjudged estate escheated another granted administration, the latter has jurisdiction, *Territory v. Klee* 1 W. 183.

**AN ACT relating to the descent of property.** Approved March 22, 1919. L. '19 ch 197.

**§9847-1. Spouse Grantee or Devisee Without Heirs Estate Reverts.** §1. If a person die leaving a surviving spouse and issue by a former spouse and leaving a will whereby all or substantially all the deceased's property passes to the surviving spouse or having before death conveyed all or substantially all his or her property to the surviving spouse, and afterwards the latter die without heirs and without disposing of his or her property by will so that except for this act the same would all escheat, the issue of the spouse first deceased shall take and inherit from the spouse last deceased the property so acquired by will or conveyance or the equivalent thereof in money or other property.

**§9847-2. Act Retroactive.** §2. Section one of this act shall be retroactive as to estates unadministered or in course of administration and undistributed.

**§9847-3. Escheat, When.** §3. Except as provided in section one, if a person die intestate leaving no husband or wife or descendant or parent or ancestor, and no descendant of a parent or of a parent's parent, his estate shall escheat to the state for the support of the common schools.

**§9848. Descent of Community Property.** §3303.—2. Upon the death of either husband or wife, one-half of the community property shall go to the survivor, subject to the community debts, and the other half shall be subject to the testamentary disposition of the deceased husband or wife, subject also to the community debts. In case no testamentary disposition shall have been made by the deceased husband or wife of his or her half of the community property it shall descend equally to the legitimate issue of his, her or their bodies. If there be no issue of said deceased living or none of their representatives living, then the said community property shall all pass to the survivors, to the exclusion of collateral heirs, subject to the community debts the family allowance and the charges and expenses of administration.

Descent, compare §§1435-6.

Wife's illegitimate child does not take mother's interest in community property on her death, *Wasmund v. Wasmund* 90 W. 274.

Power of husband over community personality terminates at death—bequest of all disallowed, *Stewart v. Bank of Endicott* 82 W. 106.

Where intent of testator not clear he is presumed to deal only with his interest, *Herrick v. Miller*, 69 W. 456.

**§9849. Descent Supplants Dower and Curtesy.** §3304.—3. The provisions of section [3302], as to the inheritance of the husband and wife from each other, apply only to the separate property of the decedents; and take the place of tenancy in dower and tenancy by curtesy, which are hereby abolished.

Dower and curtesy abolished, §1438.

Under Laws '62-63 p. 261, on death of non-resident intestate without heirs estate

Title in escheats vest without intervention of the court, *id.*

At death of child taking community property real and personal its property will go to the other children, *In re Fort's Estate* 14 W. 10.

The law of descent is not a vested or contractual right and may be changed, *Warburton v. White* 18 W. 511; *Mable v. Whitaker* 10 W. 656.

Collateral heirs residing in foreign country should show kinship by conclusive proof, but immaterial discrepancies where there are numerous witnesses will not defeat them, *O'Callaghan v. O'Brien* 116 Fed. Rep. 934.

Title of act is sufficient to include 409 §641, *Richards v. Bellingham Bay Land Co.* (C. C. A.) 54 Fed. Rep. 209.

Spouse may in will appoint executor of whole estate, *In re Guye's Estate* 54 W. 264.

Husband's mortgage of the whole interest in the property after the death of the wife is good as to his interest and he cannot claim homestead, *Wortman v. Vorhees* 14 W. 152.

Statute of '79 held not to contravene constitution of the United States, *Warburton v. White*, 176 U. S. 484.

Cited 83 W. 231.

escheated subject only to dower—widow could not convey unless dower had been assigned, *Pacific Bank v. Hannah* (C. C. A.) 90 Fed. Rep. 72.



**§9850. How Illegitimate Children Take.** §3305.—4. Every illegitimate child shall be considered as an heir to the person who shall in writing, signed in the presence of a competent witness, have acknowledged himself to be the father of such child, and shall in all cases be considered as heir of his mother, and shall inherit his or her estate in whole or in part, as the case may be, in the same manner as if he had been born in lawful wedlock; but he shall not be allowed to claim as representing his father or mother, any part of the estate of his or her kindred, either lineal or collateral, unless before his death his parents shall have intermarried, and his father, after such marriage, shall have acknowledged him as aforesaid, and adopted him into his family, in which case such child and all the legitimate children shall be considered as brothers and sisters, and on the death of either of them intestate, and without issue, the others shall inherit his estate and he theirs, as heretofore provided in like manner, as if all the children had been legitimate, saving to the father and mother respectively their rights in the estates of all the said children, as provided heretofore in like manner as if all had been legitimate.

Father testified in court that children were his—disinterment to prove impotency disallowed, *State ex rel. Meyer v. Clifford* 81 W. 324. enabling the child to take property, *In re Rohrer* 22 W. 151.

Acknowledgment may be made in other manner than for the express purpose of enabling the child to take property, *In re Matthias Estate* 63 Fed. Rep. 523.

**§9851. Mother Heir of Illegitimate Child.** §3306.—5. If any illegitimate child shall die intestate without lawful issue, his estate shall descend to his mother, or in case of her decease, to her heirs at law.

Proof of marriage not sustained—maternal heirs took estate, *Osborne v. McDonald* 159 Fed. 791.

**§9852. How Kinship Computed.** §3307.—6. The degree of kindred shall be computed according to the rules of the civil law, and the kindred of the half blood shall inherit equally with those of the whole blood in the same degree.

**§9853. When Advancements Considered Part of Estate.** §3308.—7. Any estate, real or personal that may have been given by the intestate in his lifetime as an advancement to any child or other lineal descent, shall be considered a part of the intestate's estate so far as regards the division and distribution thereof among his issue, and shall be taken by such child or other descendant, toward his share of the intestate's estate.

Debt due the estate by devisee may be set off against realty *Boyer v. Robinson* 26 W. 117. Money furnished son-in-law not considered an advancement, *Girault v. Hotelling Co.* 7 W. 90.

**§9854. No Contribution if Advancement Greater Than Proper Share.** §3309.—8. If the amount of such advancement there exceed the share of the heir so advanced, he shall be excluded from any further portion in the division and distribution of the estate, but he shall not be required to refund any part of such advancement, and if the amount so received shall be less than his share, he shall be entitled to so much more as will give him his full share of the estate of the deceased.

**§9855. Realty and Personalty Considered Together.** §3310.—9. If any such advancement shall have been made in real estate, the value thereof shall, for the purposes of the preceding section, be considered as part of the real estate to be divided, and if it be in personal estate, and if in either case it shall exceed the share of real or personal estate respectively, that would have come to the heir so advanced, he shall not refund any part of it, but shall receive so much less out of the other part of the estate as will make the whole share equal to those of the other heirs who are in the same degree with him.

**§9856. Test of Advancement.** §3311.—10. All gifts and grants shall be deemed to have been made in advancement, if expressed in the gift or grant to be so made, or if charged in writing by the intestate as an advancement, or acknowledged in writing as such by the child or other descendant.

**§9857. How Valuation of Advancement Made.** §3312.—11. If the value of the estate so advanced shall be expressed in the conveyance, or in the

charge thereof made by the intestate, or in the acknowledgment by the party receiving it, it shall be considered of that value in the division and distribution of the estate, otherwise it shall be estimated at its value when given.

**§9858. Advancement Chargeable to Heir of Heir.** §3313.—12. If any child or lineal descendant so advanced, shall die before the intestate, leaving issue, the advancement shall be taken into consideration in the division and distribution of estate, and the amount thereof shall be allowed accordingly by the representatives of the heir so advanced, as so much received towards their share of the estate in like manner as if the advancement had been made directly to them.

**§9859. "Issue" and "Real Estate" Defined.** §3314.—13. The word "issue," as used in this act, includes all the lawful lineal descendants of the ancestor, and the words "real estate," include all lands, tenements, and hereditaments, and all rights thereto, and all interests therein possessed and claimed in fee simple, or for the life of a third person.

**§9860. Succession by Representation.** §3315.—14. Inheritance or succession by right of representation takes place when the descendants of any deceased heir take the same share or right in the estate of another that their parent would have taken if living. Posthumous children are considered as living at the death of their parent.

#### DISTRIBUTION OF PERSONALTY.

**§9861. Distribution of Personalty.** §3316.—15. When any person shall die possessed of any separate personal estate, or of any right or interest therein not lawfully disposed of by his last will, the same shall be applied and distributed as follows:

(1) The widow, if any, shall be allowed all articles of her apparel or ornament, according to the degree and estate of her husband, and such provisions and other necessities for the use of herself and family under her care, as shall be allowed and ordered in pursuance of the provisions of any law; and this allowance shall be made as well when the widow receives the provision made for her in the will of her husband as when he dies intestate.

(2) The personal estate remaining after such allowance, shall be applied to the payment of the debts of the deceased, with the charges for the funeral and the settling of the estate.

(3) The residue, if any, of the personal estate, shall be distributed among the same persons as would be entitled to the real estate by this act, and in the same proportion as provided, excepting as herein further provided.

(4) If the intestate leave a husband and issue, the husband shall be entitled to one-half the residue.

(5) If there be no issue, the husband shall be entitled to the whole of the residue.

(6) If the intestate leave a widow and issue, the widow shall be entitled to one-half of said residue.

(7) If there be no issue the widow shall be entitled to the whole of the residue.

(8) If there be no husband, widow or kindred of the intestate, the said personal estate shall escheat to the state, for the use of common schools in the particular county in which the intestate shall have resided at time of death.

Administrator must be appointed if estate consisting of a promissory note, debts being established only by administration, *In re Collins' Estate* 102 W. 697.

Personalty escheats to state §9877.

Escheats go to state school fund, later

act, §9883.

Surviving undivorced husband is wife's heir, although they have been living apart for three years, *In re Sieb's Est.*, 70 W. 374.

Pre-emption claim before final proof is personalty, *Burch v. McDaniel* 2 W. T. 58.

**§9862. Advancements as Part of Estate.** §3317.—16. If the intestate leave a widow and issue, and any relation have received an advancement from the intestate in his life time, the value of such advancement shall not be taken into consideration in computing the one-half part to be assigned to the widow but she shall be entitled to the one-half part only of the said residue, after deducting the value of the advancement.



**AN ACT** in relation to the descent of real estate of deceased persons and sales thereof by executors and administrators, and quieting titles acquired by descent. Approved March 20, 1895. Laws '95 p 197.

**§9863. Realty Descends Directly to Heir. §1.** When a person dies seized of lands, tenements or hereditaments, or any right thereto or entitled to any interest therein in fee or for the life of another, his title shall vest immediately in his heirs or devisees, subject to his debts, family allowance expenses of administration and any other charges for which such real estate is liable under existing laws. No administration of the estate of such decedent, and no decree of distribution or other finding or order of any court shall be necessary in any case to vest such title in the heirs or devisees, but the same shall vest in the heirs or devisees instantly upon the death of such decedent: Provided, That no person shall be deemed a devisee until the will has been probated. The title and right to possession of such lands, tenements or hereditaments so vested in such heirs or devisees, together with the rents issues and profits thereof, shall be good and valid against all persons claiming adversely to the claims of any such heirs, or devisees, excepting only the executor or administrator when appointed and persons lawfully claiming under such executor or administrator; and any one or more of such heirs or devisees, or their grantees, jointly or severally, may sue for and recover their respective shares or interests in any such lands, tenements, or hereditaments and the rents, issues and profits thereof, whether letters testamentary or of administration be granted or not, from any person except the executor or administrator and those lawfully claiming under such executor, or administrator.

Title may be divested in probate by proceeding to quiet title, *Burke v. Bladine* 99 W. 383.

Title vests directly, *Trimble v. Donahy* 96 W. 677.

Inheritance tax collected if no administration §7067.

Heirs take subject to homestead, *Stewart v. Fitzsimmons* 86 W. 55.

Partition will not lie against executrix of nonintervention will within one year, *Bishop v. Locke* 92 W. 90.

Title diverted by will not mentioning children, *In re Ostlund's Estate* 57 W. 359.

Not necessary to administer estate of non-resident, leaving no debts, after ten years—appointment revoked, *Murphy v. Murphy* 42 W. 142.

Does not impliedly repeal 409 §§293, 484, giving administrator right to possession, *Gibson v. Slater* 42 W. 347.

No administration after six years, *Duvall v. Healy Lum. Co.* 57 W. 446.

If will provided for conveyance by inference property does not vest directly, *Martin v. Moore* 49 W. 288.

Does not affect contracts to convey—heirs not necessary parties in action on contract, *Griggs Land Co. v. Smith* 46 W. 185.

Conveyance by heirs prior to this act held good, *Demaris v. Barker* 33 W. 200.

Heirship need not be established to resist claims or dissipation of estate, *In re Sullivan's Estate* 36 W. 217.

Lands vest in devisee on probate of will with title as of the death of the testator, *Christofferson v. Pfennig* 16 W. 491.

If devisee's interest has been sold on execution trustee charged with estate as an entirety may quiet title *Id.*

Where all claims and expenses have been barred or paid probate proceedings abandoned and estate divided by agreement administrator *de bonis non* cannot claim estate, *Griffin v. Warburton* 23 W. 231.

Execution sale of husband's interest in community estate after death of wife and title quieted as to wife's heirs, is good against administrator *de bonis non* claim on estate, *Id.*

Heirs are indispensable parties to foreclosure of mortgage given by their ancestor and they need not tender purchaser at foreclosure sale any part of the debt in action to set aside foreclosure, *Anrud v. Scandinavian-American Bank* 27 W. 16.

Prior to this statute it was held that in the absence of administration of community estate that realty vested in heir *Hill v. Young* 7 W. 33.

Prior to statute heir could not quiet title until administration was closed, *Hazelton v. Bogardus* 8 W. 102.

**§9864. Law Also Applies to Present Cases. §2.** This act shall apply to and govern the transmission of title of lands, tenements and hereditaments in the case of the estates of persons hereafter dying and of persons already deceased, whether letters testamentary or of administration have been granted on such estates or not, and the title of all heirs and devisees, and their grantees, to any such real property is hereby confirmed and made valid to the same extent as if this act had been passed before the death of such decedent.

**§9865. Estate Not Liable After Six Years. §3.** No real estate of a deceased person shall be liable for his debts, unless letters testamentary or of administration be granted within six (6) years from the date of the death of such decedent.

Mortgage is in limitation—death not known to mortgagee does not suspend statute—no title after foreclosure, *Fuhrman v. Power* 43 W. 533.

Estate not liable after six years for debts and funeral expense is a debt, *In re Smith's Estate* 25 W. 539.

Is statute of limitation—action will not lie to recover from heir—minors, *Duvall v. Healy Lum. Co.* 57 W. 446.

Second wife cannot claim against estate of first wife for advances made twenty years prior to claim, *In re Mason's Estate* 95 W. 564.

**§9866. "Heirs" Defined.** §4. The word "heirs" shall be construed as meaning the person or persons to whom land, tenements and hereditaments descend as defined in sections from 3302 to 3315 [§9847-61], both inclusive, of the Code of Washington of 1881.

**§9867. Law Applies to All Cases.** §5. This act shall apply to community real property and also to separate estate; and upon the death of either husband or wife title of all community real property shall vest immediately in the person or persons, to whom the same shall go, pass, descend or be devised as provided in section 3303 [§9848] of the Code of Washington of 1881, subject to all the charges mentioned in section one of this act.

**§9868. Law Applies to Present Cases.** §6. Nothing in this act shall have the effect to prevent the real estate of a person deceased for six years prior to the going into effect of this act from being liable for his debts, where letters testamentary or of administration of the estate of such deceased person shall be issued prior to one year after the going into effect of this act.

Criminal code §8797.

## DRUNKARDS.

**§9869. Drunkard Squandering His Property.** §1671. Any person may make complaint of any person addicted to the excessive use of intoxicating liquors, to the superior judge in the county wherein such person so addicted resides, that the person complained of is a habitual drunkard, and that in consequence thereof such person is squandering his or her earnings or property, or that he or she neglects his or her business, or that such person abuses or maltreats his or her family,—which complaint must be verified by the oath of the complainant to the effect that the same is true. L. '81 14.

**§9870. Judgment of Drunkenness.** §1673. Any person addicted to the use of intoxicating liquors may, upon complaint thereof, or upon certificate of a justice of the peace as hereinafter provided, be adjudged a habitual drunkard.

**§9871. Relative May Make Complaint.** §1674. Either the father, husband, mother, wife, son or daughter of any person addicted to the excessive use of intoxicating liquors, or any person in the interest of the relative aggrieved or of the general public may ~~make~~ complaint to the superior judge of the county, wherein such person, so addicted resides, that the person complained of is a habitual drunkard, and that, in consequence thereof, such person is squandering his earnings or property, or that he neglects his business or that he abuses or maltreats his family, which complaint must be verified by the oath of the complainant to the effect that the same is true. And every justice of the peace in whose court any person shall have been convicted twice on a charge of being drunk, or drunk and disorderly, shall certify to the superior judge of the county in which he resides, that said person has thus twice been convicted. L. '83 32.

**§9872. Service.** §1672. Upon filing of the complaint, duly verified, the superior judge shall cause a copy thereof to be served upon the accused forthwith and shall summon him to appear and answer, giving at least ten days' notice, and if upon the hearing of the evidence, the allegations of the complaint are sustained, or upon filing a certificate of a justice of the peace as above provided, such judge shall, in open court, declare the accused to be a habitual drunkard, and shall cause the proceeding to be entered in full upon the records of the court. L. '83 32.

**§9873. Costs—When Complainant to Pay.** §1673. The same fees shall be allowed to the superior judge, justice of the peace, and the sheriff or constable, in all proceedings under the foregoing section of this act, as is allowed by law for like processes and services, and like fees for witnesses



as in civil cases before justice of the peace; and if the complaint is not sustained, the person making the complaint shall pay the costs; and in case the complaint is sustained, the person accused shall pay the costs. '83 32.

**§9874. Giving Liquor to Drunkard—Penalty.** §1674.—378. Any person who shall sell or give any intoxicating liquors to any habitual drunkard, as defined in the foregoing section of this act, shall be deemed guilty of a misdemeanor and on conviction thereof, by any court having criminal jurisdiction, shall be fined in any sum not less than fifty dollars or more than three hundred dollars, or be imprisoned in the county jail, not less than one or more than six months, at the discretion of the court.

**§9875. Action for Injury By Sale of Liquor.** §1675.—379. Any person who shall be injured in person or property or means of support, by any habitual drunkard, as defined by this act, while in a state of intoxication, or in consequence of such intoxication, shall have a right of action in his or her own name, severally or jointly, against any person or persons who shall, by selling or giving intoxicating liquors to such habitual drunkards, have caused his intoxication in whole or in part, and such person selling or giving such intoxicating liquors as aforesaid, shall be liable severally or jointly for all damages sustained, and the same may be recovered in a civil action. A married woman may bring such action in her own name, and all damages recovered by her shall inure to her separate use, and all damages recovered by a minor under this act, shall be paid either to such minor or to such person in trust for him or her, as the court may direct.

Damage by sale of liquors, §3196-2.

**§9876. Posting of Lists of Drunkards.** §1676. It shall be the duty of the superior judge of each county to furnish a list of the names of all persons adjudged habitual drunkards, to all parties licensed to sell, by retail, intoxicating liquors in such county, and such retail dealer shall keep posted up in some conspicuous place in his place of business, a list of such habitual drunkards; A person failing to keep such list so posted shall forfeit his license, and if he thereafter sells intoxicating as if selling without a license.

**§9876a. Vacation of Judgment of Drunkenness.** §1677.—381. Any person so declared to be an habitual drunkard may, at any time after the expiration of two years from the time he was so declared to be such, by petition addressed to the judge of the court in which he was so adjudged, have a hearing in such court, upon a day which shall be by such court set, which day shall not be more than ten days after the filing of such petition in such court, which petition may contain a statement of facts tending to show the improved condition and habits of such petitioner and to establish his character for sobriety, and a prayer that the order on record so declaring him to be such habitual drunkard be vacated and he be released from the effects thereof; which petition shall be duly verified by the petitioner. And if upon the hearing of such petition and the evidence in support thereof it appear to the judge that such petitioner is entitled to have such record vacated and ~~he so released~~, then he shall make an order so declaring that such record be vacated and annulled and that the petitioner be thereafter released from the effects thereof. L. '81 14.

## ESCHEATS.

AN ACT relating to escheats. Approved March 12 1907. Laws '07 p 253.

**§9877. Property Escheats to State.** §1. Whenever any person possessed of any property within this state shall die intestate leaving no heirs, such property shall escheat to, and the title thereto immediately vest in the State of Washington, subject, however, to existing liens thereon, the payments of decedent's debts, and the expenses of administration.

The above act superseded contract of attorney with county commissioners to collect escheats, Eaton v. King County 75 W. Burden on claimant to show right—escheat sustained on facts, In re Miller's Es-

ate 87 W 64

Territorial probate and escheat acts con- Fed. 791.

strued, Christianson v. King County, 196

Cited 239 U. S. 371.

**§9878. Administration.** §2. Such estates shall be administered and settled in the same manner as other estates. If at the expiration of eighteen months after the issuance of letters of administration, no heirs shall have appeared and established their claim thereto, the court having jurisdiction of such estate shall render a decree escheating all the property and effects of such decedent to the State of Washington.

**§9879. Personal Property.** §3. After any estate shall have been escheated as aforesaid, it shall be the duty of the administrator thereof, under the supervision and direction of the court, to sell all the personal property, such sales to be made in such manner and upon such terms and conditions as the court may deem to the best advantage to the estate. The proceeds of such personal property shall be first exhausted before any real property shall be subjected to the debts of decedent, expenses of administration, or the satisfaction of liens thereon.

**§9880. Powers in Tax Commission.** §4. The State Board of Tax Commissioners shall have supervision of all matters relating to escheats. Whenever the said Board shall have information that any person possessed of property within this State has died intestate and without known heirs, said Board, or any member thereof, may apply to the court for the appointment of an administrator, or take such other steps as it may deem proper. No sale of any property of such estate, except perishable goods or settlement of any final account, shall be made or be valid until after fifteen days notice thereof in writing and shall have been first served upon the said Board of Tax Commissioners. Said Board, or any member thereof, may demand of any administrator, other officer or person having charge of or being in possession of such estate or property, or any portion thereof, and it shall be the duty of such officer or person to furnish said Board, or any member thereof, any information or copies of any papers, vouchers, claims or reports in his possession, relating thereto, and failure or refusal so to do shall be cause for his removal by the court.

**§9881. Account of Administrator.** §5. Upon the settlement of any escheated estate, and before the discharge of the administrator, officer or person in charge thereof, all moneys in his hands shall be paid to the State Treasurer who shall issue his receipt therefor in duplicate, one of which shall be filed with the State Board of Tax Commissioners, and he shall prepare a duplicate list accurately describing all real property so escheated, one of which shall be filed with the said State Board of Tax Commissioners and one in the office of the Commissioner of Public Lands.

**§9882. Record of Tax Commission.** §6. The State Board of Tax Commissioners shall keep a record in which shall be entered memoranda of all matters and proceedings in relation to escheats, and in which shall be entered a description of all real property escheated, and they shall also keep an account of all moneys collected and paid into the State Treasury under the provisions of this act.

**§9883. Belong to School Fund.** §7. All escheats shall inure to and become a part of the permanent common school fund of the state and all escheated real property shall be managed, sold and handled in the manner provided by law for the management, disposition and sale of the State common school lands.

**§9884. Attorney General.** §8. It shall be the duty of the Attorney General and of the several county attorneys of the State to advise and assist the said State Board of Tax Commissioners in any and all of the matters and proceedings that may be had under the provisions of this act.



## EXECUTORS AND ADMINISTRATORS.

### XVIII.—Powers and Duties of Executors and Administrators.

**§9885. Powers and Duties. §147.** It shall be the duty of every executor or administrator to settle the estate in his hands as rapidly and as quickly as possible, without sacrifice to the estate. He shall collect all debts due the deceased and pay all debts as hereinafter provided. He shall be authorized in his own name to maintain and prosecute such actions as pertain to the management and settlement of the estate, and may institute suit to collect any debts due the estate or to recover any property, real or personal, or for trespass of any kind or character.

Executor may contract for necessary apple boxes, *Lamb Davis Lum. Co. v. Stowell* 96 W. 46.

~~Authority of executor~~, etc., generally, *Litzell v. Hart* 96 W. 471.

Partition will not lie within one year against executrix nonintervention will, *Bishop v. Locke* 92 W. 90.

Administrator entitled to possession of realty against heirs and devisees, *Griffith v. James* 91 W. 607.

This section not repealed by §9863 providing for direct descent, *Gibson v. Slater* 42 W. 347.

Executor may proceed on execution had after death of party, *Brooks v. Lewis* 22

W. 192.

Estate does not vest in executor to create relation of debtor and creditor between him and distributee—court may compel distribution—executor cannot offset personal claim against distributee, *McLaughlin v. Barnes* 12 W. 373.

Administrator substituted for deceased in actions as trustee, and held not accountable to estate, *In re Belt's Estate* 29 W. 535.

If unauthorized person has collected debts remedy is still against original debtor and personal property may be followed, *McCoy v. Ayres* 2 W. T. 307.

409 §485.

**§9886. Actions for Recovery of Property and on Contract. §148.** Actions for the recovery of any property or for the possession thereof, and all actions founded upon contracts, may be maintained by and against executors and administrators in all cases in which the same might have been maintained by and against their respective testators or intestates.

Executor not liable for uncollected debts when, §9789.

Death of surety before principal will not discharge surety, *Donnerberg v. Oppenheimer* 15 W. 290.

Failure to present guaranteed claim to

executor of principal guarantor will not discharge surety, *id.*

Executor may have execution on judgment obtained by deceased, §7841; execution against estate when, §9840.

Action by and against executors, §7961.

**§9887. Waste, Conversion and Trespass. §149.** Executors and administrators may maintain actions against any person who shall have wasted, destroyed, taken, carried away, or converted to his own use the goods of their testator or intestate in his lifetime; also may maintain actions for trespass committed on the estate of the deceased during his lifetime.

A railroad fill upon a street to the damage of an abutting owner is a trespass, for

which the right of action survives, *Seward v. S. R. & S. Ry.*, 64 W. 516.

**§9888. Actions on Torts of Decedent. §150.** Any person, or his personal representatives, shall have an action against the executor or administrator of any estate or intestate who in his lifetime shall have wasted, destroyed, taken, or carried away, or converted to his own use, the goods and chattels of any such person, or committed any trespass on the real estate of such person.

**§9889. Actions on Bonds of Prior Executor or Administrator. §151.** Any administrator may in his own name, for the benefit of all parties interested in the estate, maintain actions on the bond of an executor or of any former administrator of the same estate.

Administrator de bonis non may sue for

former executor, etc., *Denton v. Schneider* 80 W. 506.

**§9890. Compromise of Claims. §152.** The court shall have power to authorize the executor or administrator to compromise and compound any claims, owing the estate.

Executor may compromise title to realty

without authority of court, *Denney v. Parker* 10 W. 218.

**§9891. Recovery of Decedent's Fraudulent Conveyances. §153.** When there shall be a deficiency of assets in the hands of an executor or administrator, and when the deceased shall in his lifetime have conveyed any real estate, or any rights, or interest therein, with intent to defraud his creditors or

to avoid any right, duty or debt of any person, or shall have so conveyed such estate, which deeds or conveyances by law are void as against creditors the executor or administrator may, and it shall be his duty to, commence and prosecute to final judgment any proper action for the recovery of the same, and may recover for the benefit of the creditors all such real estate so fraudulently conveyed, and may also, for the benefit of the creditors, sue and recover all goods, chattels, rights and credits which may have been so fraudulently conveyed by the deceased in his lifetime, whatever may have been the manner of such fraudulent conveyance.

Widow has no interest in action as an heir, although the property conveyed was community personalty, Daniels v. Spear, 65 W. 121. Rights of executor are same as though the creditors were prosecuting the action against the fraudulent transferee during the lifetime of the deceased, Daniels v. Spear, 65 W. 121.

## XI.—Qualifications of Executors and Administrators.

**§9892. Persons Disqualified—Trust Companies and National Banks—Non-residents.** §87. The following persons are not qualified to act as executors or administrators. Corporations, non-residents of this state, minors, persons of unsound mind, or who have been convicted of any felony or of a misdemeanor involving moral turpitude; Provided, That trust companies regularly organized under the laws of this state and national banks when authorized so to do may act as administrators or guardians of the estate of minors or other incompetents upon petition of any person having a preference right to such appointment and may act as executors or guardians when so appointed by will. But no trust company or national bank shall be entitled to qualify as such executor or guardian under any will hereafter drawn by it, or its agents or employees, and no salaried attorney of any such company shall be allowed any attorney fee for probating any such will, or in relation to the administration or settlement of any such estate, and no part of any attorney fee shall inure, directly or indirectly, to the benefit of any trust company or national bank. And when any person to whom letters testamentary or of administration have been issued becomes disqualified to act because of leaving the state, becoming of unsound mind, or being convicted of any crime or misdemeanor involving moral turpitude, the court having jurisdiction shall revoke his or her letters: Provided, A person named as executor in any last will and testament may be appointed to act as such executor whether he be a resident of this state or not: Provided, further, That such non-resident executor shall file a bond to be approved by the court and appoint an agent or attorney in the county where such estate is being probated, upon whom service of all papers may be made; such appointment to be in writing and filed by the clerk with other papers of such estate.

## FAMILY, SUPPORT OF.

### XV.—Provisions for the Support of the Family.

**§9893. Provisions in Lieu of Homestead and Exemptions.** §103. If it shall be made to appear to the satisfaction of the court that no homestead has been claimed in the manner provided by law, either prior or subsequent to the death of the person whose estate is being administered, then the court, upon such notice as may be determined by the court, upon being satisfied that the funeral expenses, expenses of last sickness and of administration have been paid or provided for, and upon petition for that purpose, shall award and set off to the surviving spouse, if any, property of the estate, either community or separate, not exceeding the value of three thousand dollars (\$3,000.00), exclusive of any mortgage or mechanic's, laborer's or materialmen's or vendor's liens upon the property so set off, which property so set off shall include the home and household goods, if any, and such award shall be made by an order or judgment of the court and shall vest the absolute title, and thereafter there shall be no further administration upon such portion of the estate so set off, but the remainder of the



estate shall be settled as other estates. The order or judgment of the court making the award or awards provided for in this section shall be conclusive and final, except on appeal and except for fraud. The awards in this section provided shall be in lieu of all homestead provisions of the law and of exemptions.

Widower cannot claim allowance, *In re Bowen's Estate* 95 W. 82.

Homestead provision of former law superseded by §7889, *Stewart v. Fitzsimmons* 86 W. 55.

Contract waiving exemption void — homestead does not conflict—full title vested by order setting aside estate, *Scott v. Stark* 75 W. 610.

Are insurance policies exempt from charges under above and following sections? *German-Am. State Bank v. Godman* 83 W. 231.

No children, widow entitled to homestead under former law, *Clark v. Baker* 76 W. 110.

Notice to attorney is good for order setting aside realty for support of the family, *Fairfax v. Walters*, 66 W. 583.

Homestead granted the widow from community property vests in her the title in fee, *Fairfax v. Walters*, 66 W. 583.

Court may classify claims for caring for the widow during her fatal illness pending the administration of the husband's estate, and order the claims paid, as allowances to the widow, *In re Bell's Est.*, 70 W. 498.

Medical attendance and funeral expenses of minor children is proper charge, *In re Murphy's Estate* 30 W. 9.

Allowances made ex parte may be entered nunc pro tunc at subsequent hearing, *Id.*

Widow can not select homestead from husband's separate property, *In re Lloyd's Estate* 34 W. 84.

Judgment lien is not superior to homestead, *McMillan v. Mau* 1 W. 16.

If marriage disputed and appeal taken court below cannot make allowance pending appeal, *State ex rel. McLaughlin v. Lichtenberg* 4 W. 231.

Wife cannot claim homestead in devised separate realty of husband, *In re Eyre's Estate* 7 W. 291; see §7892.

Illegitimate child entitled to homestead, *In re Gorkow's Estate* 20 W. 563.

Minor child is entitled only to allowance on showing of necessity *Stewin v. Thrift* 30 W. 36.

L. '91, 380; §214, C81, §1463, are superseded by homestead law and minor cannot claim homestead if parents have not, *Stewin v. Thrift* 30 W. 36.

Exemptions from execution, 7848.

Exemptions to be allowed though other provisions made, *Greismeyer v. Boyer* 13 W. 171; are non-residents entitled? *Id.*

Husband allowed the benefit of this section, *In re Murphy's Estate* 30 W. 9.

Claimants of first wife as creditors and heirs in community are prior to claimants of second wife, *In re Cannon's Estate* 18 W. 101.

If homestead is separate property title does not descend as above directed, *Austin v. Clifford* 24 W. 172.

**§9894. Homestead—Provision Additional to Homestead—Awards from Separate Property.** §104. In event a homestead has been, or shall be selected in the manner provided by law, whether the selection of such homestead result in vesting the complete or partial title in the survivor, it shall be the duty of the court, upon petition of any person interested, and upon being satisfied that the value thereof does not exceed two thousand dollars (\$2,000.00), exclusive of mortgages, mechanic's, laborer's, materialmen's or vendor's liens thereon, to enter a decree, upon such notice as the court may determine, setting off and awarding such homestead to the survivor, thereby vesting the title thereto in fee simple in the survivor. In addition thereto, the court, upon being satisfied that the funeral expenses, expenses of last sickness and of administration have been paid or provided for, shall set off and award to such survivor, other property, either separate or community, not to exceed one thousand dollars (\$1,000.00) in value, exclusive of all such liens. If the value of the homestead, exclusive of all such liens, be less than two thousand dollars (\$2,000.00), the court shall set off and award additional property, either separate or community, in lieu of such deficiency, so that the value of the homestead, exclusive of all such liens, when added to the value of the other property awarded, exclusive of all such liens, shall equal three thousand dollars (\$3,000.00). Said decree shall particularly describe the said homestead and other property so awarded, and such homestead and other property so awarded shall not be subject to further administration, and such decree shall be conclusive and final, except on appeal, and except for fraud, and such awards shall be in lieu of all further homestead rights and of all exemptions: Provided, That the awards in this and the next preceding section provided for, shall not be taken from separate property of the deceased, which is otherwise disposed of by will, where there is no minor child living as the issue of the surviving spouse and the deceased.

**§9895. Provision for Minor Children.** §105. If there be no surviving spouse, the court shall award and set aside to the minor child or children, if any, and in such proportions as he considers proper, property of the estate as the court may consider necessary for the care and support of said minor or minors until they become of legal age, not exceeding in value the sum of three thousand dollars (\$3,000.00).

Fee cannot be awarded children from under former law, *In re Hedemark's Estate*, father's separate property when no widow, 77 W. 525.

**§9896. Further Allowance for Maintenance.** §106. In addition to the awards herein provided for, the court may make such further reasonable allowance of cash out of the estate as may be necessary for the maintenance of the family according to their circumstances, during the progress of the settlement of the estate, and any such allowance shall be paid by the executor or administrator in preference to all other charges, except funeral charges, expenses of last sickness and expenses of administration.

## GUARDIANS.

### XXII.—Appointment of Guardians for Minors, Insane and Mentally Incompetent Persons.

**§9897. Authority to Appoint Guardians.** §195. The superior court of each county shall have power to appoint guardians for the persons and estates, or either thereof, of minors, insane and mentally incompetent persons resident of the county, and guardians for the estates of all such persons who are non-residents of the state but who have property in such county needing care and attention.

Incompetency to manage business affairs warrants guardianship, *In re Bayer's Estate* 101 W. 694.

Management of estate of non-resident insane, §9919.

Commitment of insane to hospital, §2827.

Non-resident insane—insanity established—jurisdiction of court—residence unknown—non-resident guardian, *In re Sall* 59 W. 539.

Appointment of temporary guardian found necessary, *Reed v. Brown* 36 W. 130.

Divorced mother of children of tender years died and father unfit to care for them, were awarded temporarily to grandmother, *Russner v. McMillan* 37 W. 416.

Consent to adoption forever relinquishes right to custody even after death of adopting parents, *In re Masterson's Estate* 45 W. 48.

Guardian here though one in Florida—residence questioned—right of action is property, *In re Stewart* 85 W. 190.

Guardians appointed of residents and non-residents—right of action is property, *In re Stewart* 85 W. 190.

Guardian without adjudication of insanity—notice to custodian of insane person in sale of realty, *Donaldson v. Winningham*

**§9898. Qualifications.** §196. Guardians shall have the same qualifications as executors and administrators except that a non-resident, otherwise qualified, may be guardian of the estate in this state of a non-resident ward.

**§9899. Petition for Appointment—Notice of Hearing—Consent of Minor to Appointment of Parent—Foreign Guardian of Non-resident.** §197. When a petition duly verified is presented to the superior court, showing that a person resident of the county where the petition is filed is a minor or is insane or mentally incompetent and needs the care and attention of a guardian, or that such person has property in the county needing care and attention of a guardian, or showing that such minor, insane or mentally incompetent person is a non-resident of the state and has property in the

48 W. 374.

Notice of application required, §9900.

Notice to incompetent and person having charge is jurisdictional, *State ex rel. Lowary v. Superior Court* 41 W. 450.

Guardian may be appointed for drunkard, *In re Wetmore* 6 W. 271.

Personal presence necessary for court's jurisdiction, *id.*

Where person comprehends transaction he is bound though his mind is impaired, *Hodgdon v. Crosby* 1 W. T. 578.

Neglected and abused children may be taken from parents, §593.

Age of majority, §580.

Liability of minor on contracts, 69 §5.

Action for death of ward, §8264.

That guardian would inherit from ward in absence of heirs no objection to appointment, *In re Masterson's Estate* 45 W. 48.

Insurance policy payable to children goes directly to them—confusion of funds, *In re Hill's Heirs* 8 W. 330.

Ward may compel accounting by executor of foreign guardian, *Ong v. Whipple* 3 W. 333.

Judgment against a minor by appearance of one not having right may be impeached collaterally, *Hatch v. Ferguson* 57 Fed. Rep. 966; affirmed (C. C. A.) 68 *id.* 43.



county needing care and attention of a guardian, and praying for appointment of a guardian for the person and property, or either, of such minor, insane or mentally incompetent person, the court shall thereupon make an order setting a time for the hearing of such petition and directing the clerk of the court to issue a notice stating that such petition has been filed and the time and place of hearing thereof and that all persons interested shall appear at such time and place and show cause why a guardian should not be appointed for the person and estate, or either thereof, of such minor, insane or mentally incompetent person: Provided, however, If such petition be made by a parent asking the appointment of himself as guardian of his minor child under the age of fourteen years, or if a petition be accompanied by the written consent of a minor over the age of fourteen years, consenting to the appointment of the guardian asked for, or should a minor, insane or mentally incompetent person be a non-resident of the state and the petition be by any foreign guardian of such minor, insane or mentally incompetent person, then the court may at once upon presentation of such petition, and without notice of hearing thereof, appoint such guardian.

**§9900. Service of Notice.** §198. If the petition be with reference to the appointment of any guardian mentioned in the preceding section, except guardians for the property of non-residents of the state, then the notice of hearing provided for in the preceding section shall be personally served upon the person having the custody, care and control of such minor, insane or mentally incompetent person, or the person with whom such minor, insane or mentally incompetent person resides, and if such minor, insane, or mentally incompetent person be over the age of fourteen years, then such notice shall be personally served upon such minor, insane or mentally incompetent person also. If such minor, insane or mentally incompetent person be in the care, custody or control of any officer or institution, then such notice shall be served upon such officer or head of such institution. The notice herein provided for shall be served at least ten days prior to the time set for such hearing, and proof, as in civil actions provided, of such service shall be made and filed in the proceedings.

Persons to be served—private service— Publication is the only service required, time, *Donaldson v. Winningham* 62 W. 212. *Coleman v. Cravens* 41 W. 1.

**§9901. Service by Publication in Case of Non-Resident Ward.** §199. If such petition be for the appointment of a guardian to the property of any minor, insane or mentally incompetent person, who resides without the State of Washington, then the petitioner shall make an affidavit stating the fact of such non-residence, and unless the petitioner be a non-resident guardian, the notice hereinbefore provided for shall be served by publication in some newspaper printed and of general circulation in the county where the petition is filed, and such publication shall be for once a week for not less than three successive weeks prior to the time set for such hearing, and proof of such publication shall be made and filed as in other cases. At the time fixed for such hearing, if the court be satisfied that the publication has been made, it may proceed to the hearing and to the appointment of the guardian.

**§9902. Substitute Notice.** §200. In all cases for the appointment of guardian where the notice cannot be given as in this act provided, the court may require such notice as to it may seem right and proper and take such proceedings as it shall determine upon with reference to the appointment of such guardian.

**§9903. Duty of Prosecuting Attorney.** §201. Before the hearing, the petition or a copy thereof shall be submitted to the prosecuting attorney, whose duty it shall be to appear for such minor, insane or incompetent person at such hearing: Provided, however, It shall not be necessary for the prosecuting attorney to appear if such person for whom a guardian is to be appointed, be represented in the proceeding by any other attorney.

Appearance by the prosecuting attorney—represented by an attorney of his own so  
ney unnecessary, if the incompetent is section, *In re Ervay*, 64 W. 138.

# XXIII—Powers and Duties of Guardians of Minors, Insane or Mentally Incompetent Persons or Their Estates:

**§9904. Guardians Under Court Control—Legal Age.** §202. Guardians herein provided for shall at all times be under the general direction and control of the court making the appointment. For the purposes of this act, males shall be of full and legal age when they shall be twenty-one years old, and females shall be deemed of full and legal age when they are eighteen years old or at any age under eighteen, when, with the consent of the parent or guardian, or the person under whose care or government they may be, they shall have been legally married.

Estate passes from guardian to administrator on death of ward—attorney fees are claims, *Eisenhower v. Vaughn* 95 W. 256.      ment of special counsel unwarranted—expenses of guardian, *In re Bayer* 80 W. 340.      Appearance by ward having attained majority at final accounting and discharge of guardian dispenses with guardian ad litem—conveyances, *Meeker v. Meeker* 50 W. 473.

Insane ward found to be competent, guardian should be discharged—employment of special counsel unwarranted—expenses of guardian, *In re Bayer* 80 W. 340.

**§9905. Oath and Bond of Guardian—Successive Recoveries on Bond.** §203. Before letters of guardianship are issued, each guardian shall take and subscribe an oath and file a bond, with sureties to be approved by the court, payable to the State of Washington, in such sum as the court may fix, and such bond shall be conditioned substantially as follows: The condition of this obligation is such, that if the above bound A. B., who has been appointed guardian for C. D., shall faithfully discharge the office and trust of such guardian according to law and shall render a fair and just account of his guardianship to the superior court for the county of \_\_\_\_\_, from time to time as he shall thereto be required by such court, and comply with all orders of the court, lawfully made, relative to the goods, chattels, moneys, care, management and education of such minor, insane or mentally incompetent person, or his or her property, and render and pay to such minor, insane or mentally incompetent person all moneys, goods, chattels, title papers and effects which may come into the hands or possession of such guardian, at such time and in such manner as the court may order or adjudge, then this obligation shall be void, otherwise to be and remain in full force and effect. The said bond shall be for the use of such minor, insane or mentally incompetent person, and shall not become void upon the first recovery, but may be put in suit from time to time against all or any one of the obligors, in the name and for the use and benefit of any person entitled by the breach thereof, until the whole penalty shall be recovered thereon. The court may require an additional bond whenever for any reason it may appear to the court that such additional bond should be given.

Bond by guardian is jurisdictional under prior law—sale void, *Vanhorn v. Nestoss* 90 W. 228.      Provisions mentioned applied to guardian's bond, *Newberg v. Wilkinson*, 190 Fed. 62; affirmed 199 Fed. 673.

Special act of legislature prohibited, Const. art. 2, §28.      Statute must be strictly complied with, *In re Renton's Estate* 10 W. 533.

Heir at law by special act of legislature prohibited, Const. art. 2, §28.      Action on bond is limited to three years, *Dickman v. Strobach* 26 W. 558.

**§9906. Law of Executor's Bonds Governs** §204. All the provisions of this act relative to bonds given by executors and administrators shall apply to bonds given by guardians.

**§9907. Inventory—Accounts—Final Accounting—Payment and Collection of Debts—Education of Ward.** §205. It shall be the duty of the guardian of any estate:

1. To make out and file, within three months after his appointment, a full inventory, verified by oath, of the real and personal estate of his ward, with the value of the same, and failing so to do, it shall be the duty of the court to remove him and appoint a successor.

2. To manage the estate for the best interest of his ward.

3. To render on oath to the proper court an account of his receipts and of his expenditures, with vouchers therefor, at least once in every two years, and whenever cited to do so, and failing so to do, he shall receive no allowances for services, and be liable to said ward on his bond



in damages for ten per cent. of the whole amount of the estate, both real and personal in his hands belonging to such ward.

4. At the expiration of his trust fully to account for and pay over to the proper person all the estate of said ward remaining in his hands.

5. To pay all just debts due from such ward out of the estate in his hands, and to collect all debts and demands due such ward, and in case of doubtful debts, to compound the same, and to appear for and defend, or cause to be defended, all suits against such ward.

6. When any ward has no father or mother, or such father or mother is unable or fails to educate such ward, it shall be the duty of his guardian to provide for him such education as the amount of his estate may justify.

Guardian of insane wife cannot take over late limited, *Clough v. Monro* 86 W. 507.  
community property, *Merriam v. Patrick* 103 W. 442. Guardian required to account for own transactions prior to guardianship, *In re Williamson* 75 W. 353.

Duty to defend, power to admit or stipu-

**§9908. Guardian to Represent Ward—Compromises.** §206. Guardians of minors, insane or mentally incompetent persons, or their property, shall have power and authority to represent their wards in all matters, and may sue and be sued as such guardian, and such ward shall be bound by any compromise or settlement made by such guardian: Provided, The court shall have ordered or approved such action of the guardian. Before making any such compromise or settlement, the guardian shall file with the court which appointed him a petition setting out the nature of the suit, claim or dispute, together with the reasons for settling or compromising the same, and the court, either with or without notice of hearing, may make such order on such petition as shall appear proper.

Service on guardian alone sufficient, *United States F. & G. Co. v. Howell* 74 W. 596. person, §8269.

Action against guardian and summons to him sustained, *Clough v. Monro* 86 W. 507.

Guardian cannot compel the cancellation of will of ward nor take any action relating to will, *Pond v. Faust* 90 W. 117.

It is the duty of a guardian to defend his ward's rights, his power to stipulate is limited, *Clough v. Monro* 86 W. 507.

Infants shall appear by guardian or guardian ad litem, §§8268, 9913.

Guardian shall defend all suits, §9908, but see §9913.

Powers conferred include power to make contracts respecting subject matter, *Schultheis v. Nash* 27 W. 250.

Appointment of guardian ad litem insane

Guardian of estate may agree to partition of realty without suit, §8330.

Guardian cannot stipulate that action shall abide result of defense interposed by another party, *Mattson v. Mattson* 29 W. 417.

Prior to statute, compromise held good, though claim invalid, *Terry v. Sicade* 37 W. 249.

Sales of property by executors, §9975; private sales, §9981.

Proceedings in partition, §8285.

Guardian may assent to partition without suit, 81 §1543.

Partition held invalid as such, but valid as an act of the parties, minors having failed to disavow were estopped *Brazee v. Schofield* 2 W. T. 209.

**§9909. No Action Unless Claim Rejected.** §207. No holder of a claim, demand or judgment against an estate of a person under guardianship shall maintain an action thereon or enforce same, unless the claim, demand or judgment shall have been first presented to such guardian and by him rejected in whole or in part. A failure or neglect to allow a claim for thirty days after the same is presented shall be deemed a rejection thereof.

**§9910. Judgments, Except Foreclosures, Rank as Claims.** §208. No judgment entered against such guardian or the estate or person of any such minor, insane or mentally incompetent person, except for the foreclosure of a mortgage or other lien, shall be a lien against or upon the estate of such minor, insane or mentally incompetent person, but such judgment shall be presented and paid as other claims of the same class or grade.

Judgment may be obtained against insane surety on attachment bond without a hearing and his property sold on execution—the proceedings not subject to collateral attack, *Pollock v. Horn* 13 W. 626.

**§9911. Removal or Death of Guardians—Delivery of Estate to Successors.** §209. The court in all cases shall have power to remove guardians for good and sufficient reasons, which shall be entered of record, and to appoint others in their place or in the place of those who may die, who shall give bond and security for the faithful discharge of their duties as heretofore prescribed; and when any guardian shall be removed or die, and a successor

be appointed, the court shall have power to compel such guardian removed to deliver up to such successor all goods, chattels, moneys, title papers, or other effects belonging to such minor, insane or mentally incompetent person, which may be in the possession of such guardian so removed, or of the executors or administrators of a deceased guardian, or in the possession of any other person or persons, and upon failure, to commit the party offending to prison, until he, she, or they comply with the order of the court.

Guardian must account and pay over estate—*ex parte* order discharging guardian void, *In re Sroufe's Estates* 74 W. 639. A proceeding not invalid because conducted without notice to the ward, *Jorgenson v. Winter*, 69 W. 573.

**§9912. Testamentary Guardians.** §210. When either parent is deceased, the surviving parent of any minor child may, by his last will in writing appoint a guardian or guardians for his minor child, whether born at the time of making such will or afterwards, to continue during the minority of such child, or for any less time, and every such testamentary guardian shall give bond in like manner and with like conditions as hereinbefore required, and he shall have the same powers and perform the same duties with regard to the person and estate of the ward as a guardian appointed as aforesaid.

**§9913. Guardians Ad Litem.** §211. Nothing contained in this chapter shall affect or impair the power of any court to appoint a guardian to defend the interests of any minor, insane or mentally incompetent person interested in any suit or matter pending therein, or to commence and prosecute any suit in his behalf.

Guardian shall be allowed to prosecute and defend suits, §9908; *eral guardian and ward adverse*, *Ponti v. Hoffman* 87 W. 137.

Duty to defend, power to stipulate limited, *Clough v. Monro* 86 W. 507. If non-resident parents and children come into court parent may be made guardian ad litem of children, *Shannon v. Consolidated etc. Mining Co.* 24 W. 119.

Guardian ad litem appointed where gen-

**§9914. Sale, Lease or Mortgage of Property.** §212. Whenever it shall appear to the satisfaction of a court by the petition of any guardian, that it is necessary or proper to sell, lease or mortgage any of the real or personal property of the estate of such ward for the purpose of paying debts or for the care, support and education of such ward, or to redeem any property of such ward's estate covered by mortgage or other lien, or for the purpose of making any investments, or for any other purpose which to the court may seem right and proper, the court may make an order directing such sale, lease or mortgage of such part or parts of the real or personal property as shall to the court seem proper.

A transfer of infant's interest for the purpose of making a mortgage is void though the transaction is fair, *Dormitzer v. German Savings etc. Society* 23 W. 132. Bond is mandatory though will may dispense with it, *Hatch v. Ferguson* 57 Fed. Rep. 966; affirmed (C. C. A.) 68 id. 43.

**§9915. Petition.** §213. Such application shall be by petition, verified by the oath of the guardian, and shall substantially set forth:

1. The value and character of all personal estate belonging to such ward that has come to the knowledge or possession of such guardian.
2. The disposition of such personal estate.
3. The amount and condition of the ward's personal estate, if any, dependent upon the settlement of any estate, or the execution of any trust.
4. The annual income of the real estate of the ward.
5. The amount of rent received and the application thereof.
6. The proposed manner of reinvesting the proceeds of the sale, if asked for that purpose.
7. Each item of indebtedness, or the amount and character of the lien, if the sale is prayed for the liquidation thereof.
8. The age of the ward, where and with whom residing.
9. All other facts connected with the estate and condition of the ward necessary to enable the court to fully understand the same. If there is no personal estate belonging to such ward, in possession or expectancy, and none has come into the hands of such guardian, and no rents have been received, the fact shall be stated in the application.



**§9916. Law Governing Sales and Mortgages by Executors Appointed—Leases.** §214. All the provisions of this act with reference to applications by administrators or executors for sales and mortgages by them, and notices concerning same, and all provisions of this act with reference to the report of such administrator or executor of sales and mortgages, and the confirmation thereof, shall be applicable to sales and mortgages made by any guardian mentioned in this act, but the court may order leases to be made upon such terms, conditions and notices as it may see fit. The provisions of [§9950] §64 hereof shall not be applicable to guardianships.

**§9917. Sales Not Avoided by Irregularities—Conclusiveness of Confirmation.** §215. No sale by any guardian of real or personal property shall be void or be set aside or be attacked because of any irregularities whatsoever, and none of the steps leading up to such sale or the confirmation thereof shall be jurisdictional, and the confirmation by the court of any such sale shall be conclusive as to the regularity and legality of such sale or sales, and the passing of title after confirmation by the court shall vest an absolute title in the purchaser, and such instruments of transfer may not be attacked for any purpose or any reason, except for fraud.

Act has no retroactive effect and prior sale by guardian without bond void, *Vanhorn v. Nestoss* 99 W. 328. Does not cure prior sale by guardian without bond, *Vanhorn v. Nestoss* 99 W. 328.

**§9818. Compensation and Expenses.** §216. Every guardian shall be allowed by the court, on settling his accounts, the amount of all reasonable expenses incurred in the execution of his trust, and also such compensation for his services and the services of his attorney, as the court shall deem reasonable.

**§9919. Removal of Property of Non-resident Ward.** §217. When the guardian and ward are both non-residents, and the ward is entitled to property in this state, which may be moved to another state or territory, such property may be removed to the state or territory in which such ward may reside, upon the application of the guardian to the judge of the superior court of the county in which the estate of the ward, or the principal part thereof, may be, in the manner following: The guardian so applying must produce a transcript from the records of a court of competent jurisdiction, certified according to the laws of this state, showing his appointment as guardian of the ward in the state or territory in which he and the said ward reside, that he has qualified as such according to the laws thereof; and must also give thirty days' notice to the resident executor, administrator, guardian, agent or trustee, if there be such, of the applications. Thereupon, if no objection be made, or if no good cause be shown to the contrary, the judge of the court shall make an order granting such guardian leave to remove the property of said ward to the state or territory in which he or she may reside; which order shall be full and complete authority to said guardian to sue for and receive the same in his own name, for the use and benefit of said ward.

Guardianship whether resident or non-resident—right of action is property, *In re Crosby* 42 W. 366.

*Stewart* 85 W. 190.

Management of estates of non-resident state, §9919.

Insane, §9919.

Removal of infant's property from the state, §9919. This act by implication repeals former law—sale of property is authorized, *Coleman v. Cravens* 41 W. 1.

**§9920. Guardian's Notice to Creditors of Ward—Limitation of Claims.** §218. Every guardian for any insane or mentally incompetent person shall, after appointment and qualification, cause notice of his appointment to be published in some newspaper printed in the county of his appointment, once a week for three consecutive weeks, and if there be no such paper published in such county, then by posting such notice for a like period at the courthouse of such county. The court by order may require such notice to be published or posted for an additional period. Such notice shall further call upon all creditors to serve their claims, duly verified, on such guardian or his attorney of record, and file with the clerk of the court, with proof of service, within six months from the date of the first publication of such notice, otherwise such claims shall be barred.

Claim not barred after three months as in estates, *Clough v. Monroe* 86 W. 507.

## INVENTORY.

## XIV.—The Inventory and Effects of Deceased Persons.

**§9921. Inventory—Appraisers.** §95. Every executor or administrator shall make and return, upon oath, into the court, within one month after his appointment, a true inventory of all of the property of the estate which shall have come into his hands, and within thirty days after filing such inventory he shall make application to the court to appoint three disinterested persons to appraise the property so inventoried, and it shall be the duty of the court to appoint such appraisers. Such appraisers shall receive as compensation for their services each the sum of three (\$3.00) per day and mileage. If any part of the estate shall be in another county than that in which letters are issued, appraisers residing in such county may be appointed by the court having jurisdiction of the case, or, if most advisable, the same appraisers may act: Provided, that the court may appoint persons to appraise the estate at the time, or any time after the appointment of the administrator; And provided further, that where it is shown by the filing of such inventory, or other proof, to the satisfaction of the court, that the whole estate consists of personal property of less value than two hundred and fifty dollars (\$250.00) exclusive of moneys, drafts, checks, bonds, or other securities of fixed value, an appraisement may be dispensed with in the discretion of the court. L. '19 ch. 23.

*Affirmed, Griffith v. James* 91 W. 607.

Partition will not lie within one year against executrix nonintervention will, *Bishop v. Locke* 92 W. 90.

Ownership of property may be tried, *In re Martin's Estate* 82 W. 226.

Does not apply where one comes into possession under claim of ownership, *Jackson v. Lamar*, 67 W. 385.

This section is not repealed by §9863 providing for direct descent to heirs—administrator of wife's estate may recover of husband, *Gibson v. Slater* 42 W. 347.

Administrator has no right without authority of the court to make substantial improvements, but where it is done by consent of all parties allowance may be

made, *In re Alfstad's Estate* 27 W. 175.

Administrator is liable for use and occupation, *Id.*

Administrator has right to possession of realty until heirs are determined and distribution made (1890), *Hanford v. Davies* 1 W. 477; see §9863 and notes.

Title of realty passes to administrator for purpose of complying with decedent's contracts (1895); *Hyde v. Heller* 10 W. 586.

Devisee or heir cannot maintain ejectment (1892), *Dunn v. Peterson* 4 W. 170; *Balch v. Smith* *Id.* 497; see §9863 and notes.

Administrator may reclaim his own property improperly included in inventory, *Filley v. Murphy* 30 W. 1.

**§9922. Oath and Duties of Appraisers.** §96. Before proceeding to the discharge of their duties the appraisers shall take and subscribe an oath, before any officer authorized to administer oaths, to be attached to the inventory, that they will honestly and impartially appraise the property which shall be exhibited to them, according to the best of their knowledge and ability; they shall proceed to estimate and appraise the property, and set down each article separately, with the value thereof in dollars and cents, in figures, opposite the respective articles: Provided, however, Household articles need not be separately mentioned. The inventory shall contain all the estate of the deceased, real and personal, a statement of all credits, partnership and other interests, bonds, mortgages, notes, moneys, and other securities for the payment of money belonging to the deceased, specifying the name of the debtor in each security, the date, the sum originally payable, the indorsements thereon, if any, and their dates, and the sum which, in the judgment of the appraisers, may be collectible on each debt, interest or security.

**§9923. Claims Against Personal Representatives Not Discharged by Appointment.** §97. The naming of any person as executor in a will, or the appointment of any person as administrator, shall not operate as a discharge from any just claim which the testator or intestate had against the executor or administrator, but the claim shall be included in the inventory and the executor and administrator shall be liable to the same extent as he would have been had he not been appointed executor or administrator.

Administrator cannot cancel his own mortgage to estate to secure loan from third party, *Eastham v. Loudon* 17 W. 48.

**§9924. Discharge of Testator's Claim Construed Specific Bequest.** §98. The discharge or bequest in a will of any debt or demand of the testator



against any executor named in his will or against any person shall not be valid against the creditors of the deceased, but shall be construed as a specific bequest of such debt or demand, and the amount thereof shall be included in the inventory, and shall, if necessary, be applied in payment of his debts; if not necessary for that purpose, it shall be paid in the same manner and proportions as other specific legacies.

§9925. **Failure to Return Inventory Ground for Revoking Letters.** §99. If any executor or administrator shall neglect or refuse to return the inventory within the period prescribed, or within such further time, not exceeding three months, as the court may allow, the court may revoke the letters testamentary or of administration; and the executor or administrator shall be liable on his bond to any party interested for the injury sustained by the estate through his neglect.

This section is directory and court may revoke letters in its discretion, *Clancy v. McElroy* 30 W. 567.

§9926. **Additional Inventory on Discovery of Further Assets.** §100. Whenever property not mentioned in any inventory shall come to the knowledge and possession of the executor or administrator, he shall cause the same to be appraised in the manner prescribed in this act, and an additional inventory to be returned, subscribed and sworn to as is provided in this act, as soon as practicable after the discovery thereof, and the making of such inventory may be enforced, after notice, by attachment to which may be added the revocation of the letters.

Informal additional inventory sustained, *Ackerson v. Orchard* 7 W. 377.

§9927. **Embezzlement Prior to Letters.** §101. If any person, before the granting of letters testamentary or of administration, shall embezzle or alienate any of the moneys, goods, chattels, or effects of any deceased person, he shall stand chargeable, and be liable to the executor or administrator of the estate, in the value of the property so embezzled or alienated, together with any damage occasioned thereby, to be recovered for the benefit of the estate.

§9928. **Discovery of Concealed or Embezzled Property.** §102. The court shall have authority to bring before it any person or persons suspected of having in his possession or having concealed, embezzled, conveyed or disposed of any of the property of the estate, or who has in his possession or within his knowledge any conveyances, bonds, contracts, or other writings which contain evidence of or may tend to establish the right, title, interest or claim of the deceased in and to any property. If such person be not in the county in which the letters were granted, he may be cited and examined either before the court of the county where found or before the court issuing the order of citation, and if he be found innocent of the charges he shall be entitled to recover costs of the estate, which costs shall be fees and mileage of witnesses, statutory attorneys fees, and such per diem and mileage for the person so charged as allowed to witnesses in civil proceedings. Such party may be brought before the court by means of citation such as the court may choose to issue, and if he refuse to answer such interrogatories as may be put to him touching such matters, the court may commit him to the county jail, there to remain until he shall be willing to make such answers.

Ownership of property may be tried. In *re Martin's Estate* 82 W. 226.

Interrogatories may be propounded in court one by one, *Main v. Hadfield* 41 W. 504.

## JURISDICTION.

### I.—Jurisdiction and Powers of the Court.

§9929. **Extent of Jurisdiction.** §1. The superior courts in the exercise of their jurisdiction of matters of probate shall have power to probate or refuse to probate wills, appoint administrators, executors and guardians of insane and incompetent persons and minors, and administer and settle all such estates, award processes and cause to come before them all persons whom they may deem it necessary to examine, and order and cause to be issued all such writs as may be proper or necessary, and do all things proper or incident to the exercise of such jurisdiction.

Hearings at chambers, probate of will, §10049; granting of letters, §9961.

Power of judge limited to express authority, §8568.

All process shall run in the name of the, Const. art. 4, §27.

Decree equal to any other—collateral attack for fraud, *Meeker v. Waddle* 83 W. 628.

Question of wife triable by court without jury—advisory verdict, *Enos v. Hamblen* 79 W. 583.

Finality of decree finding fact and time of death, *Wagner v. Alderson* 91 W. 157.

Probate and other jurisdiction together, State ex rel. *Keasal v. Superior Court* 76 W. 291.

Title may be tried in probate and costs allowed. *Sloan v. West*, 63 W. 623.

No personal property, no creditors and decedent's estate in course of administration in another state, yet administration may be had in this state to pay taxes, *Hanford v. Davies* 1 W. 477.

Court has not jurisdiction to determine controversy regarding attorney's fees though services were rendered in the case, *Winston v. Crowe* 28 W. 65; nor questions of partnership, *In re Alfstad's Estate* 27 W. 175.

Presumption of death after absence of seven years and administration valid—supposed deceased cannot maintain ejectment; *Scott v. McNeal* 5 W. 309.

Administration of estate of a person after his absence for seven years is not conclusive and he may raise question collaterally reversing Supreme Court of Washington (5

W. 309), *Scott v. McNeal* 154 U. S. 34.

On question whether statute is due process of law court is not bound by state court, id.

Judge may examine account of guardian of insane. Clerk cannot and charge fee, *Denny v. Holloway* 17 W. 487.

Probate proceedings held valid as an act of the parties, *Brazee v. Schofield* 2 W. T. 209.

Court cannot declare lien for administrator's fees, *Horton v. Barto* 17 W. 675.

Court may try title even with jury incident to probate proceeding, *Filley v. Murphy* 30 W. 1.

Court has no power to try title to real estate, *Stewart v. Lohr* 1 W. 341.

Estate cannot be charged with attorney's fees in procuring letters or in establishing right of administratrix to inherit, *Willbur v. Wilbur* 17 W. 683.

Court may pay debts, but has no power to charge property with liens, *Huston v. Becker* 15 W. 586.

Court has power on final distribution to determine legatees—legatee doubtful, *Reformed Presbyterian Church, etc., v. McMillan* 31 W. 643.

Court has power to determine whether property is an asset of the estate, *In re Belts Estate* 29 W. 535.

Federal courts have jurisdiction to determine the status of foreign heirs though state court has taken jurisdiction of the same parties and cause of action, *O'Callaghan v. O'Brien* 116 Fed. Rep. 934.

Private seal of territorial judge could be used in office, *Ward v. Mooney* 1 W. T. 104.

**§9930. Books of Record.** §2. There shall be kept in the office of the clerk of the superior court the following books of record for probate matters:

1. A journal, in which shall be entered all orders, decrees and judgments made by the court, or the judge thereof, and the minutes of the court, in probate proceedings.

2. A record of wills, in which shall be recorded all wills admitted to probate.

3. A record of letters testamentary and of administration, in which all letters testamentary and of administration shall be recorded.

4. A record of bonds, in which all bonds and obligations required by law to be approved by the court or judge in matters of probate shall be recorded.

5. A record of claims, in which at least one page shall be given to each estate or case, wherein shall be entered, under the title of each estate or case, in separate columns properly ruled: 1, the names of claimants against the estate; 2, the date of filing proof of claim; 3, the amount claimed; 4, the amount allowed; 5, the date of allowance; 6, the nature of the claim; 7, the amount paid; 8, the number of the voucher for each payment; 9, the date of filing the voucher; 10, the date of disallowance and of notice of disallowance.

6. A memorandum of the files, in which at least one page shall be given to each estate or case, wherein shall be noted each paper filed in the case, except proof of claims and vouchers noted in record of claims, and the date of filing each paper.

7. A record of marriages, in which certificates of all marriages solemnized in the county shall be recorded.

#### General Provisions.

**§9931. Jurisdiction of Courts in Administration of Estates.** §219. It is the intention of this act that the courts mentioned shall have full and ample power and authority to administer and settle all estates of decedents,



minors, insane and mentally incompetent persons in this act mentioned. If the provisions of this [act] with reference to the administration and settlement of such estate should in any cases and under any circumstances be inapplicable or insufficient or doubtful, the court shall nevertheless have full power and authority to proceed with such administration and settlement in any manner and way which to the court seems right and proper, all to the end that such estates may be by the court administered upon and settled.

**§9932. Exercise of Powers.** §220. In exercising any of the jurisdiction or powers by this act given or intended to be given, the court is authorized to make, issue and cause to be filed or served, any and all manner and kinds of orders, judgments, citations, notices, summons, and other writs and processes not inconsistent with the provisions of this act, which may be considered proper or necessary in the exercise of such jurisdiction.

## LETTERS.

### IX.—Letters Testamentary and of Administration.

**§9933. Letters to Executors—Refusal to Serve.** §47. After probate of any will, letters testamentary shall be granted to the persons therein appointed executors. If a part of the persons thus appointed refuse to act, or be disqualified, the letters shall be granted to the other persons appointed therein. If all such persons refuse to act, letters of administration with the will annexed shall be granted to the person to whom administration would have been granted if there had been no will.

Court acquires jurisdiction by petition of son and appoint another though heirs pro- one not entitled and may reject such per- test, *In re Wilbur's Estate* 8 W. 35.

**§9934. Objections to Executors Named.** §48. Any person interested in a will may file objections in writing to the granting of letters testamentary to the persons named as executors, or any of them, and the objection shall be heard and determined by the court.

**§9935. Community Property, How Administered.** §49. A surviving spouse shall be entitled to administer upon the community property, notwithstanding any provisions of the will to the contrary, if the court find such spouse to be otherwise qualified; but if such surviving spouse do not make application for such appointment within forty days immediately following the death of the deceased spouse, he or she shall be considered as having waived his or her right to administer upon such community property. If any person, other than the surviving spouse, make application for letters testamentary on such property, prior to the expiration of such forty days, then the court, before making any such appointment, shall require notice of such application to be given the said surviving spouse, for such time and in such manner as the court may determine, unless such applicant show to the satisfaction of the court that there is no surviving spouse or that he or she has in writing waived the right to administer upon such community property.

**§9936. Minority or Absence of Executor.** §50. If the executor be a minor or absent from the state, letters of administration with the will annexed shall be granted, during the time of such minority or absence, to some other person unless there be another executor who shall accept the trust, in which case the estate shall be administered by such other executor until the disqualification shall be removed, when such minor, having arrived at full age, or such absentee, having returned, shall be admitted as joint executor with the former.

**§9937. Revocation of Letters by Discovery of Will.** §51. If after letters of administration are granted a will of the deceased be found and probate thereof be granted, the letters shall be revoked and letters testamentary or of administration with the will annexed, shall be granted.

Administrator cannot appeal from order order has been made, *Cairns v. Donahey* 59 revoking letters where no substantial final W. 130.

**§9938. Annulment of Letters.** §52. The court appointing any executor or administrator shall have authority for any cause deemed sufficient, to cancel and annul such letters, and appoint other executors or administrators in the place of those removed.

**§9939. Effect of Death of Executor.** §53. No executor of an executor shall, as such, be authorized to administer upon the estate of the first testator, but on the death of the sole or surviving executor of any last will, letters of administration with the will annexed, on the estate of the first testator left unadministered, shall be issued.

**§9940. Powers of Executor When Associates Are Disqualified.** §54. When any of the executors named shall not qualify or having qualified shall become disqualified or be removed, the remaining executor or executors shall have the authority to perform every act and discharge every trust required by the will, and their acts shall be effectual for every purpose.

**§9941. Authority of Administrators with Will Annexed.** §55. Administrators with the will annexed shall have the same authority as the executor named in the will would have had, and their acts shall be as effectual for every purpose.

Estate having been administered in another state held no necessity for administration in his state after thirteen years—allowance to widow—certiorari, State ex rel. Speckart v. Superior Court 48 W. 141.

**§9942. Execution of Letters Testamentary and With Will Annexed.** §56. Letters testamentary and of administration with the will annexed shall be signed by the clerk of the court, and under the seal of the court, and a copy of the will shall be attached to the letters.

**§9943. Record and Certification of Letters.** §57. The clerk shall record, in a well-bound book kept for that purpose, all letters testamentary and of administration before they are delivered to the executors or administrators, and shall certify on such letters that they have been so recorded.

**§9944. Copies as Evidence.** §58. Copies of such letters, or copies of the records thereof, certified by the clerk, and under the seal of the superior court, shall be received as evidence in any court in this state.

**§9945. Form of Letters Testamentary.** §59. Letters testamentary to be issued to executors under the provisions of this chapter may be in the following form:

State of Washington, county of.....

In the superior court of the county of.....

Whereas, the last will of A B, deceased, was, on the.....day of....., A. D....., duly exhibited, proven, and recorded in our said superior court, a copy of which is hereto annexed; and whereas, it appears in and by said will that C D is appointed executor thereon, and, whereas, said C D has duly qualified, now, therefore, know all men by these presents, that we do hereby authorize the said C D to execute said will according to law.

Witness my hand and the seal of said court this.....day of....., A. D. 19....

**§9946. Form With Will Annexed.** §60. Letters of administration with the will annexed shall be in substantially the same form as provided for letters testamentary.

**§9947. Persons Entitled to Letters of Administration.** §61. Administration of the estate of the person dying intestate shall be granted to some one or more of the persons hereinafter mentioned, and they shall be respectively entitled in the following order:

1. The surviving husband or wife, or such person as he or she may request to have appointed.

2. The next of kin in the following order: 1, child or children; 2, father or mother; 3, brothers or sisters; 4, grandchildren.

3. One or more of the principal creditors.

4. If the persons so entitled shall neglect for more than forty days after



the death of the intestate to present a petition for letters of administration, or if there be no relatives or next of kin or they waive their right, or if there be no principal creditor or creditors, then the court may appoint any suitable person to administer such estate.

Court may appoint on petition of any one interested, if appointee refuses appoint another, *Wilkie v. Bailey* 74 W. 241.

Husband should not be denied administration because he claims property as his separate estate, *Buscher v. Buscher*, 72 W. 675.

Right of creditor to appointment of administrator depends on the nonaction of other classes given a preference right, *Larson v. Stewart*, 69 W. 223.

The right of a surviving spouse to administer waived by failure to apply within 40 days, *Koloff v. C. M. & P. S. Ry.*, 71 W. 543.

Relatives not mentioned in statute have no right—assignee of claim after death is not "creditor," *In re Hoss' Estate* 59 W. 360.

Letters cannot issue if spouse has made will of community property naming executors—prohibition, *In re Guye's Estate* 54 W. 264.

Administration on one-half community estate on death of wife valid on collateral attack, *Wiley v. Verhaest* 52 W. 475.

No letters on death of wife whole estate administered on death of husband—territorial court—validity of sales, *Magee v. Big Bend Land Co.* 51 W. 406.

Surviving husband though a felon may designate person—lapse of forty days forfeits right—affidavit of heirs, *McLean v. Roller* 33 W. 166.

Creditors letters revoked on petition of heirs and third party appointed, *In re Farnham's Estate* 41 W. 570.

If principal creditor or it seems a majority of creditors waive right court may appoint any one, *In re Sullivan's Estate* 25 W. 430.

"Creditors" mean those at time of death, *id.*

Husband neglecting to apply for three years cannot resist appointment of another, *In re Sutton's Estate* 31 W. 340.

**§9948. Application for Letters.** §62. Application for letters of administration shall be made by petition in writing, signed and verified by the applicant or his attorney, and filed with the court, which petition shall set forth the facts essential to giving the court jurisdiction of the case, and state, if known, the names, ages and residence of the heirs of the deceased and that the deceased died without a will.

Administrator may allege claimant is not heir—heirship determined on final account,

*State ex rel. Meyer v. Clifford* 78 W. 555.

Failure to verify petition is not fatal, *McCoy v. Ayres* 2 W. T. 203.

**§9949. Notice of Hearing—Exceptions as to Petition by Surviving Spouse.** §63. When a petition for letters of administration or for letters of administration with the will annexed shall be filed, the clerk must give notice thereof, by causing notices to be posted in at least three public places in the county, one of which must be at the place where the court is held, containing the name of the decedent, the name of the applicant and the time at which the petition will be heard. Such notice shall be given at least ten days before the time fixed for such hearing, and the clerk shall have authority to fix the time of such hearing: Provided, however, No notice of hearing need be given or posted if the petition be presented by or on behalf of the surviving husband or wife, and on the presentation of such petition by or on behalf of the surviving husband or wife, the court may at once make appointment and cause letters of administration to be issued: Provided, further, That if there be a surviving spouse and the petition is presented by anyone other than the surviving spouse prior to forty days after the death of the intestate, notice to such surviving spouse shall be given as hereinbefore provided.

**§9950. Special Notice to Heirs, Legatees or Devisees.** §64. At any time after the issuance of letters testamentary or of administration upon the estate of any decedent, any person interested in said estate as heir, devisee or legatee, or attorney for such heir, devisee or legatee, may serve upon the executor or administrator (or upon the attorney for such executor or administrator) and file with the clerk of the court wherein the administration of such estate is pending, a written request stating that he desires special notice of any or all of the following named matters, steps or proceedings in the administration of said estate, to-wit: 1. Filing of petitions for sales, leases or mortgages of any property of the estate. 2. Filing of accounts. 3. Filing of petitions for distribution. 4. Petitions by the executor or administrator for family allowances and homesteads.

**Mode of Giving Notice—Finding as to Regularity.** Such request shall state the postoffice address of such heir, devisee or legatee, or his attorney,

and thereafter a brief notice of the filing of any of such petitions or accounts, except petitions for sale of perishable property, or other personal property which will incur expense or loss by keeping, shall be addressed to such heir, devisee or legatee, or his attorney, at his stated postoffice address, and deposited in the United States postoffice, with the postage thereon prepaid, at least five days before the hearing on such petition or account; or personal service of such notices may be made on such heir, devisee or legatee, or attorney, not less than five days before such hearing, and such personal service shall be equivalent to such deposit in the postoffice, and proof of mailing or of personal service must be filed with the clerk before the hearing of such petition or account. If upon the hearing it shall appear to the satisfaction of the court that the said notice has been regularly given, the court shall so find in its order or judgment, and such judgment shall be final and conclusive.

**§9951. Form of Letters of Administration.** §65. Letters of administration shall be signed by the clerk, and be under the seal of the court, and may be substantially in the following form:

State of Washington, county of .....

Whereas, A. B., late of ..... on or about the ..... day of ..... A. D. .... died intestate, leaving at the time of his death, property in this state subject to administration: Now, therefore, know all men by these presents, that we do hereby appoint ..... administrator upon said estate, and whereas said administrator has duly qualified, hereby authorize him to administer the same according to law.

Witness my hand and the seal of said court this ..... day of .....  
....., A. D. 19.....

**§9952. Oath of Executor or Administrator.** §66. Before letters testamentary or of administration are issued to the executor or administrator, he must take and subscribe an oath, before some person authorized to administer oaths, that he will perform, according to law, the duties of his trust as executor or administrator, which oath must be recorded.

**§9953. Bond of Executor or Administrator—Increase or Reduction of Bond.** §67. Every person to whom letters testamentary or of administration are directed to issue must, before receiving them, execute a bond to the State of Washington, except as hereinafter provided, with such surety, or sureties, as the court may judge sufficient, which bond shall be in a sum to be fixed by the court, and which bond must be conditioned that the executor or administrator shall faithfully execute the duties of the trust according to law, and such bond shall be approved by the court. The court may at any time and for any reason require the executor or administrator to give additional bonds, the same to be conditioned and to be approved as above provided: Provided, The court may allow a reduction of the bond upon proper showing.

**§9954. Citation and Examination of Sureties—Costs.** §68. Before the judge approves any bond required under this chapter, and after its approval, he may, of his own motion, or upon the motion of any person interested in the estate, supported by affidavit that the sureties, or some one or more of them, are not worth as much as they have justified to, order a citation to issue, requiring such sureties to appear before him at a designated time and place, to be examined touching their property and its value; and the judge must, at the same time, cause notice to be issued to the executor or administrator, requiring his appearance on the return of the citation, and on its return he may examine the sureties and such witnesses as may be produced touching the property of the sureties and its value; and if upon such examination he is satisfied that the bond is insufficient he must require sufficient additional security. If the bond and sureties are found by the court to be sufficient, the costs incident to such hearing shall be taxed against the party instituting such hearing. As a part of such costs the sureties appearing shall be allowed such fees and mileage as witnesses are allowed in civil proceedings: Provided, That when the citation herein referred to is issued on the motion of the court, no costs shall be imposed.



**§9955. Waiver of Bond.** §69. When it is expressly provided in the will that no bonds shall be required of the executor, letters testamentary may issue and sale of real estate be made and confirmed without any bond, unless the court for good cause requires one to be executed; but the executor may at any time afterwards, if it appear from any cause necessary or proper, be required to file a bond, as in other cases.

**§9956. Additional Bond May Be Required.** §70. Any person interested may at any time by verified petition to the court, or otherwise, complain of the sufficiency of any bond or sureties thereon, and the court may upon such petition, or upon its own motion, and with or without hearing upon the matter, require the executor or administrator to give a new, or additional bond, or bonds, and in all such matters the court may act in its discretion and make such orders and citations as to it may seem right and proper in the premises.

**§9957. Persons Excluded as Sureties.** §71. No judge of the superior court, no sheriff, clerk of a court, or deputy of either, and no attorney at law shall be taken as surety on any bond required to be taken in any proceeding in probate.

**§9958. Record of Bonds.** §72. The clerk shall record in a book kept for that purpose all bonds given by executors and administrators, and preserve the originals in regular file.

**§9959. Defective Bonds—Successive Recoveries.** §73. No bond required under the provisions of this chapter, and intended as such bond, shall be void for want of form, recital or condition; nor shall the principal or surety on such account be discharged, but all the parties thereto shall be held and bound to the full extent contemplated by the law requiring the same, to the amount specified in such bond. In all actions on such defective bond the plaintiff may state its legal effect in the same manner as though it were a perfect bond. The bond shall not be void upon the first recovery, but may be sued and recovered upon, from time to time, by any person aggrieved in his own name, until the whole penalty is exhausted.

Bond "for" appellant instead of  
"against" him held good, *Rupe v. Kemp* 99 W. 371.

**§9960. Revocation of Letters—Citation and Hearing.** §74. Whenever the court has reason to believe that any executor or administrator has wasted, embezzled, or mismanaged, or is about to waste, or embezzle the property of the estate committed to his charge, or has committed, or is about to commit a fraud upon the estate, or is incompetent to act, or is permanently removed from the state, or has wrongfully neglected the estate, or has neglected to perform any acts as such executor or administrator, or for any other cause or reason which to the court appears necessary, it shall have power and authority, after citation and hearing to revoke such letters. The manner of the citation and of the service of the same and of the time of hearing shall be wholly in the discretion of the court, and if the court for any such reasons revokes such letters the powers of such executor or administrator shall at once cease, and it shall be the duty of the court to immediately appoint some other executor or administrator, as in this act provided.

**§9961. Hearings in Chambers.** §75. The applications and acts authorized by the foregoing section in this chapter may be heard and determined in court or at chambers. All orders made therein must be entered upon the minutes of the court.

**§9962. Powers of Remaining Executors.** §76. If there be more than one executor or administrator of an estate, and the letters to part of them be revoked or surrendered, or a part die or in any way become disqualified, those who remain shall perform all the duties required by law.

**§9963. Administrator De Bonis Non.** §77. If the executor or administrator of an estate shall die, resign, or the letters be revoked before the settlement of the estate, letters of administration of the goods remaining unadministered shall be granted to those to whom administration would have been granted if the original letters had not been obtained, or the person obtaining them

had renounced administration, and the administrator de bonis non shall perform the like duties and incur the like liabilities as the former executors or administrators.

On death of husband administrator powers go to administrator de bonis non, Griffith v. James 91 W. 607.

**§9964. Accounting on Death or Resignation of Executor or Administrator.** §78. If any executor or administrator resign, or his letters be revoked, or he die, he or his representatives shall account for, pay, and deliver to his successor, or to the surviving or remaining executors or administrators, all money and property of every kind, and all rights, credits, deeds, evidences of debt, and papers of every kind, of the deceased, at such time and in such manner as the court shall order on final settlement with such executor or administrator or his legal representatives.

Administrator de bonis non may sue former executor or his personal representatives for rents, etc., Denton v. Schneider 80 W. 506.

Husband was administrator of wife's estate and died his administrator took wife's community estate; held that second administrator of wife could not claim property after standing by for a year and a half, In re Hill's Estate 6 W. 285.

**§9965. Proceedings Against Delinquent Executors.** §79. The succeeding administrator, or remaining executor or administrator, may proceed by law against any delinquent former executor or administrator, or his personal representatives, or the sureties of either, or against any other person possessed of any part of the estate.

**§9966. Limitation of Action Against Sureties.** §80. All actions against sureties shall be commenced within six years after the revocation or surrender of letters of administration or death of the principal.

Applies to guardian's bond, Newbery v. Wilkinson, 190 Fed. 62; affirmed 199 Fed. 673.

## NON-INTERVENTION WILLS.

### XIII.—Settlement of Estates Without Administration.

**§9967. Settlement Without Court—Order of Distribution—Refusal or Disqualification of Executor Named—Mismanagement.** §92. In all cases where it is provided in the last will and testament of the deceased that the estate shall be settled in a manner provided in such last will and testament, and that such estate shall be settled without the intervention of any court or courts, and where it duly appears to the court, by the inventory filed, and other proof, that the estate is fully solvent, which fact may be established by an order of the court on the filing of the inventory, it shall not be necessary to take out letters testamentary or of administration, except to admit the will to probate and to file a true inventory of all the property of such estate and give notice to creditors and to the state board or person having charge of the collection of inheritance tax, in the manner required by existing laws. After the probate of any such will and the filing of such inventory all such estates may be managed and settled without the intervention of the court, if the last will and testament shall so provide. But when the estate is ready to be closed the court, upon application, shall have authority and it shall be its duty, to make and cause to be entered a decree finding and adjudging that all debts have been paid, finding and adjudging also the heirs and those entitled to take under the will and distributing the property to the persons entitled to the same, such decree to be made after notice given as provided for like decrees in the estates of persons dying intestate: Provided, however, In all cases, if the party named in such will as executor shall decline to execute the trust or shall die or be otherwise disabled for any cause from acting as such executor, then letters testamentary or of administration shall issue and the estate be settled as in other cases: And provided further, If the person named in the will shall fail to execute the trust faithfully and to take care and promote the interest of all parties, then, upon petition of a creditor of such estate, or of any of the heirs, or of any person on behalf of any minor heir, it shall be the duty of the court to cite such person having the management of such estate to appear before such court, and if, upon hearing of such petition it shall appear that the trust in such will is not faithfully



discharged, and that the parties interested, or any of them have been or are about to be damaged by such actual doings of the executor, then, in the discretion of the court, administration may be had and required as is now required in the administration of estates, and in all such cases the costs of the citation and hearing shall be charged against the party failing and neglecting to execute the trust as required in such will.

Applies to all accounts not made at time act took effect—removal of co-trustee for want of harmony in management—both denied costs, *In re Cornett's Estate* 102 W. 254.

Equity is forum to enforce rights under will, *Clark v. Baker* 76 W. 110.

Executor sustained under nonintervention will without notice to creditors, *In re Hooper's Estate* 76 W. 72.

Executor is a trustee and may apply to court for construction of will and distribution, *Bayer v. Bayer* 83 W. 430.

Presentation of claim not condition precedent to action—executor a creditor, *Schubach v. Redelsheimer* 92 W. 124.

Courts will interfere only for failure of duty required by law of executor—partition will not lie within one year allowed for claims, *Bishop v. Locke* 92 W. 90.

Powers of sale etc. under will—solvency determined by inventory, *Fulmer v. Gable*, 73 W. 684.

Does not give jurisdiction to order an allowance to a widow upon the settlement of an estate under a nonintervention will, *In re Guy's Estate*, 63 W. 167.

Will vests title in executor regardless of validity of final disposal of property—limitation of action against grantee of executor, *Korsstrom v. Barnes* 156 Fed. 280.

Intention to dispense with administration must be by express words or necessary implication, *Shufeldt v. Hughes* 55 W. 246.

Power to sell gives no power to mortgage but mortgage is consideration for sale afterward made, *Sprague v. Betz* 44 W. 650.

Testator's right under this statute is vested and subsequent statutes cannot affect it, *State ex rel. Phinney v. Superior Court* 21 W. 186.

Complaint in foreclosure of mortgage made by executor under non-intervention of former law, held good, *Miller v. Borst* 11 W. 260.

If executors faithfully stay within pow-

ers given in will they will not be interfered with, but in this case it is held they had not done so, *Newport v. Newport* 5 W. 114.

Creditor of heir cannot complain of mismanagement, *State ex rel. Co. v. Superior Court* 21 W. 575.

Cestui que trust may in equity require accounting and oust trustee—executor, *Seattle v. McDonald* 26 W. 98.

Executor takes title and property is taxable in his domicile, *Walla Walla v. Moore* 16 W. 339.

Executor may maintain action to quiet title, *Boyer v. Robinson* 26 W. 117.

If trustees are appointed instead of executors equity and not probate has jurisdiction, *Smith v. Smith* 15 W. 239.

Action against executrix under non-intervention will on liability of testator as shareholder in bank—orders of court as in administration are without jurisdiction, and are no protection from liability, *In re Macdonald's Estate* 29 W. 422.

Court has no jurisdiction to order sale of realty after trust reposed in executrix has been concluded, *English-McCaffery Logging Co. v. Clowe* 29 W. 721.

Conveyances are valid without confirmation, *Providence Life & Tr. Co. v. Mills* 91 Fed. Rep. 435.

Applies to wills prior to act—claims barred in one year, *Strand v. Stewart* 51 W. 685.

Creditors must present claims to executor under nonintervention will—presumption of notice to creditors—trust for creditors applies only to claimants presenting claims in time, *Foley v. McDonnell* 48 W. 272.

Notice to creditors not necessary, nor is failure to present claim a bar, *Moore v. Kirkman* 19 W. 605.

Notice to creditors is not necessary, *In re Macdonald's Estate* 29 W. 422.

Cited 86 W. 349.

**§9968. Powers of Non-Intervention Executors.** §93. Executors acting under wills such as are mentioned in the last preceding section shall have power, after the filing of an inventory of the estate, if the said estate has been adjudged solvent, to mortgage, lease, sell and convey the real and personal property of the testator without an order of the court for that purpose and without notice, approval or confirmation, and in all other respects administer and settle the estate without the intervention of the court.

Sale of personalty prior to probate sustained, *In re Crim's Estate* 89 W. 395.

**§9969. Right to Possession and Management.** §94. Every executor or administrator shall, after having qualified, by giving bond as hereinbefore provided, have a right to the immediate possession of all the real as well as personal estate of the deceased, and may receive the rents and profits of the real estate until the estate shall be settled or delivered over, by order of the court, to the heirs or devisees, and shall keep in tenantable repair all houses, buildings and fixtures thereon, which are under his control.

## PARTNERSHIPS.

### XII.—Partnerships.

**§9970. Inventory of Partnership Property.** §88. The executor or administrator of the estate of a deceased person who was a member of a co-part-

nership, shall include in the inventory, in a separate schedule, the whole of the property of such co-partnership; and the appraisers shall estimate the value thereof and also the value of such deceased person's individual interest in the partnership property.

**Administration by Surviving Partner—Accounting to General Administrator.** The whole of the partnership property shall be administered by such executor or administrator, unless the surviving partner shall within five days from the filing of the inventory, or such further time as the court may allow, apply for the administration thereof. If he so apply, he shall be entitled to administer the partnership property if the court find him to be qualified. If letters of administration be issued to such partner, he shall give such bond as the court may require. He shall be denominated the administrator of the partnership and shall give such notice to the partnership creditors as general administrators are required to give and shall settle the partnership estate in the same manner as is or shall be provided for the settlement of estates of deceased persons, except he shall account to the general executor or administrator for the interest of the deceased in the partnership property.

Certiorari will lie to review refusal of court to determine partnership, *State ex rel. Keasal v. Superior Court* 76 W. 291.

In action on partnership note when survivor does not administer the administration is not a necessary party, *Harrington v. Herrick* (C. C. A.) 64 Fed. Rep. 468.

Surviving partner cannot be sued pending administration, *Brigham-Hopkins Co. v. Gross* 20 W. 218.

Surviving partner is sole representative of partnership to sue and be sued in the absence of statute and executor of deceased

cannot be sued until funds exhausted, *Farlow v. Coggan* 1 W. 258.

Realty descends to heirs subject to debts of firm—partner cannot quiet title until he obtains legal title, *Harrington v. Roth* 12 W. 65.

After estate is settled action will lie against surviving partners on claim and limitation runs after estate settled, *Brigham-Hopkins Co. v. Gross* 30 W. 277.

In sale of real estate partner is not required to make the usual showing required of an administrator, *State ex rel. Bogert v. Neal* 29 W. 391.

**§9971. Purchase of Deceased Partner's Interest by Survivor—Protection Against Partnership Liabilities.** §89. The surviving partner, whether he be administrator or not, shall have the right at any time to petition the court to purchase the interest of such deceased in any or all of the personal property of the partnership. Upon such petition being presented it shall be the duty of the court, in such manner as it may see fit, to learn and by order to fix the value of the interest of the deceased over and above all partnership debts and obligations, in such partnership personal property, and the terms and conditions upon which such surviving partner may purchase, and thereafter such surviving partner shall have the preference right for such length of time as the court may fix, to purchase the interest of such deceased partner at the price and upon the terms and conditions fixed by the court. It shall be the duty of the court to make such orders as it may deem proper or necessary to protect the estate of the deceased against any liability for partnership debts or obligations.

**§9972. Authority to Survivor to Operate Business.** §90. The court shall have authority, in instances where it is deemed advisable, to authorize the administrator of the partnership property to continue to operate any going business pending the settlement of the partnership estate or the purchase by the surviving partner of the interest of the deceased partner.

**§9973. Administration Where Survivor Does Not Act.** §91. In case the surviving partner is not appointed administrator of the partnership property, the administration thereof shall devolve upon the executor or administrator and the court shall have power to require the surviving partner to deliver the partnership property and evidences thereof to the administrator or executor.

Limitation of time warrants certiorari to review refusal to grant letters to partner, *State ex rel. Keasal v. Superior Court* 76 W. 291.

Cited 76 W. 291.



## SALES AND MORTGAGES.

Private sales by order of court, §9981; or direction of the will, §9998.

Action to recover realty sold by executor or guardian within five years, §7542.

Sale or mortgage of realty of non-resident insane, §9914.

Sale of realty of infants, §9914.

Sale or mortgage of realty of insane, §9929.

## XVII.—Sales and Mortgages by Executors and Administrators.

§9974. **Authority for Sale or Mortgage.** §122. The court may order real or personal property sold or mortgaged for the purposes hereinafter mentioned but no sale or mortgage of any property of an estate shall be made except under an order of the court, unless otherwise provided by law.

Order to "immediately mortgage or sell" a portion of the estate means the necessary legal proceedings, *In re Ferguson's Estate* 102 W. 148.

torial courts, *Magee v. Big Bend Land Co* 51 W. 406.

Caveat emptor applies to purchaser at sale, *Matson v. Johnson* 48 W. 256.

Validity of sale in double administration, one spouse having died first—terri-

court or parties may ratify unauthorized sale of personalty, *Brewster v. Barter* 2 W. T. 135.

§9975. **Sales of Personal Property—Mortgage or Pledge.** §123. The court may at any time order any personal property of the estate sold for the preservation of such property or for the payment of the debts of the estate or the expenses of administration or for the purpose of discharging any obligation of the estate or for any other reason which may to the court seem right and proper, and such order may be made either upon or without petition therefor, and such sales may be either at public auction or private sale and with or without notice of such sale, as the court may determine, and upon such terms and conditions as the court may decide upon. No notice of petition for sale of any personal property need be given, except as provided in [§9950] section 64 hereof, unless the court expressly orders such notice. Where personal property is sold prior to appraisal, the sale price shall be deemed the value for appraisal. Personal property may be mortgaged or pledged for the same reasons and purposes, and in the same manner as is hereinafter provided for real property.

Order directing private sale of stock of goods may authorize purchase of new goods, *In re Ennis' Estate* 96 W. 352.

§9976. **Sale or Mortgage of Realty—Petition—Hearing—Petition Not Essential.** §124. Whenever it shall appear to the satisfaction of the court that any portion or all of the real property should be sold or mortgaged for the purpose of raising money to pay the debts and obligations of the estate, the expenses of administration, inheritance tax or for the support of the family, the court may order the sale or mortgage of such portion of the real property as appears to the court necessary for the purpose aforesaid. It shall be the duty of the executor or administrator to present a petition to the court giving a description of all the property of the estate and its character, the amount of the debts, expenses and obligations of the estate and such other things as will tend to assist the court in determining the necessity for the sale or mortgage and the amount thereof. Unless the court shall by order expressly so provide, no notice of the hearing of such petition for sale or mortgage need be given, except as provided in [§9950] section 64 hereof; if, however, the court should order notice of such hearing, it shall determine upon the kind, character and time thereof. At the hearing of such petition the court may have brought before it such testimony or information as it may see fit to receive, for the purpose of determining whether it should order any of the property of the estate sold or mortgaged. The absence of any allegation in the petition shall not deprive the court of jurisdiction to order said sale or mortgage, and the court may, if it see fit, order such sale or mortgage or both without any petition having been previously presented.

Decree of distribution on short notice void, *Teynor v. Heible* 74 W. 222.

Attachment was sought against property mortgaged, but defeated, *McKenna v. Cosgrove* 41 W. 332.

Mortgage of realty void because personalty not exhausted—estate cannot be charged with benefit unless such is affirmatively shown, *Wallace v. Grant* 27 W. 130.

Sale to mortgagee at price slightly more than mortgage held valid, *Dooly v. Russell* 10 W. 195.

Order running "to all persons interested" is sufficient—no formal order entered but notice held good, *Furth v. U. S. Mort. & Tr. Co.* 13 W. 73.

Sale void if statute not followed, *Ball v. Clothier* 34 W. 299.

Cited 86 W. 63.

**§9977. Order Directing Mortgage — Mortgage Not Impaired by Irregularities.** §125. If the court should determine that it is necessary or proper, for any of the said purposes, to mortgage any or all of said property, it may make an order directing the executor or administrator to mortgage such thereof as it may determine upon, and such order shall contain the terms and conditions of such transaction and authorize the executor or administrator to execute and deliver his note or notes and secure the same by mortgage, and thereafter it shall be the duty of such executor or administrator to comply with such order. The executor or administrator shall not deliver any such note, mortgage or other evidence of indebtedness until he has first presented same to the court and obtained its approval of the form. Every mortgage so made and approved shall be effectual to mortgage and encumber all the right, title and interest of the said estate in the property described therein at the time of the death of the said decedent, or acquired by his estate, and no irregularity in the proceedings shall impair or invalidate any mortgage given under such order of the court and approved by it.

**Executor procuring sale without court deciding advisability guilty of fraud, Stewart v. Baldwin 86 W. 63.**

**§9978. Order Directing Sale.** §126. If the court should determine that it is necessary to sell any or all of the real estate for the purposes mentioned in this act, then it may make and cause to be entered an order directing the executor or administrator to sell so much of the real estate as the court may determine necessary for the purposes aforesaid. Such order shall give a particular description of the property to be sold and the terms of such sale and shall provide whether such property shall be sold at public or private sale. The court shall order sold that part of the real estate which is generally devised, rather than any part which may have been specifically devised, but the court may, if it appears necessary, sell any or all of the real estate so devised. After the giving of such order it shall be the duty of the administrator or executor to sell such real estate in accordance with the order of the court and as in this act provided with reference to the public or private sales of real estate.

**Sale out of order as directed, held valid, In re Bryant's Estate 38 W. 337.**

**§9979. Sales of Realty at Public Auction.** §127. When real property is directed to be sold at public auction, notice of the time and place of such sale shall be posted in not less than three public places in the county where the property or some part thereof is situated, at least twenty days before the day of sale, and such notice shall be published in some newspaper published in said county, if there be one, and if none, then in such newspaper or newspapers as the court may by order direct, once a week for three successive weeks before such sale, in which notices the property ordered sold shall be described with proper certainty. At the time and place named in such notices for the said sale, the executor or administrator shall proceed to sell the property upon the terms and conditions ordered by the court, and to the highest and best bidder. All sales of real estate at public auction shall be made at the front door of the court house of the county in which the lands are, unless the court shall by order otherwise direct.

**Sales are proceedings in rem and personal notice not necessary even to spouse Ryan v. Ferguson 3 W. 356.**

**§9980. Postponement of Sale.** §128. The executor or administrator, should he deem it for the best interests of all concerned, may postpone such sale to a time fixed but not to exceed twenty days, and such postponement shall be made by proclamation of the executor or administrator at the time and place first appointed for the sale; if there be an adjournment of such sale for more than three days, then it shall be the duty of the executor or administrator to cause written notice of such adjournment to be posted at the place of posting the original notices of sale in addition to making such proclamation.

**§9981. Private Sale of Realty—Notice—Written Bids Required—Shortening Time of Notice.** §129. When a sale of real property is ordered to be made at private sale, notice of the same must be posted in three public



places in the county in which the property or part thereof is situated, and published in a newspaper, if there be one printed in the same county; if none, then in such newspaper as the court may direct; such notice to be posted at least two weeks and be published once a week for at least two successive weeks before the day on or after which the sale is to be made, in which the lands and tenements to be sold must be described with common certainty. The notice must state the day on or after which the sale will be made and the place where offers or bids will be received. The day last referred to must be at least fifteen days from the first publication of notice and the sale must not be made before that day, but must be made within six months thereafter. The bids or offers must be in writing, and may be left at the place designated in the notice or delivered to the executor or administrator personally, or may be filed in the office of the clerk of the court to which the return of sale must be made, at any time after the first publication of the notice and before the making of the sale. If it be shown that it will be for the best interest of the estate the court or judge may, by an order, shorten the time of notice, which shall not, however, be less than one week, and may provide that the sale may be made on or after a day less than fifteen, but not less than eight days from the first publication of the notice of sale, and the sale may be made to correspond with such order.

Private sales directed by the will, §9998. 286, authorize sale of property of non-resident insane, *Coleman v. Cravens* 41 W. L.

**§9982. Sale Must Bring 90% of Appraised Value—Reappraisement.** §130. No sale of real estate at private sale shall be confirmed by the court unless the sum offered is at least ninety per cent of the appraised value thereof, nor unless such real estate shall have been appraised within one year immediately prior to such sale. If it has not been so appraised, or if the court is satisfied that the appraisement is too high or too low, appraisers may be appointed, and they must make an appraisement thereof in the same manner as in the case of the original appraisement of the estate, and which appraisement may be made at any time before the sale, or the confirmation thereof.

**§9983. Return of Sale—Approval by Court—Resale.** §131. The executor or administrator making any sale of real estate, either at public or private sale, shall within ten days after making such sale file with the clerk of the court his return of such sale, the same being duly verified. At any time after the expiration of ten days from the filing of such return the court may without notice approve and confirm such sale and direct proper instruments of transfer to be executed and delivered. But if the court shall be of the opinion that the proceedings were unfair, or that the sum obtained was disproportionate to the value of the property sold, or if made at private sale that it did not sell for at least ninety per cent of the appraised value as in the preceding section provided, and that a sum exceeding said bid by at least ten per cent exclusive of the expense of a new sale, may be obtained, the court may refuse to approve or confirm such sale and may order a resale. On a resale, notice shall be given and the sale shall be conducted in all respects as though no previous sale had been made.

Fire insurance policy void after confirmation and before deed, *Moller v. Niagara Fire Ins. Co.* 54 W. 439.

Higher bid made and withdrawn and sale confirmed without notice to executor, held irregular, *In re Holburte's Estate* 48 W.

378. A sale confirmed will convey title regardless of recitals of deed, *Ryan v. Ferguson* 3 W. 368.

Only parties interested in the estate can object to confirmation, *Terry v. Clothier* 1 W. 475.

**§9984. Offer of Increased Bid.** §132. If, at any time before confirmation of any such sale, any person shall present to the court or file with the clerk of the court a bid on such property for an amount equal to ten per cent higher than the bid upon which sale was made by the executor or administrator, and shall deposit with the court or the clerk not less than twenty per cent of such bid, the same to be forfeited to the estate unless such bidder shall comply with his bid, then it shall be the duty of the court to cause the former successful bidder to be informed of such increased bid and to give such former successful bidder an opportunity to raise his

bid higher than the bid of said subsequent bidder, and if such former successful bidder fails within the time fixed by the court to raise his bid as aforesaid, the property may be sold to such subsequent bidder, or if such first successful bidder should raise his bid as herein provided then the property may be sold to him.

**§9985. Order for Conveyance. §133.** Upon the confirmation of any such sale the court shall direct the executor or administrator to make, execute, and deliver instruments conveying the title to the person to whom such property may be sold, and such instruments of conveyance shall be deemed to convey all the estate, rights and interests of the testator or intestate at the death of the deceased, and any interest acquired by the estate.

**§9986. Confirmation Conclusive as to Regularity. §134.** No petition or allegation thereof for the sale of real estate shall be considered jurisdictional, and confirmation by the court of any sale shall be absolutely conclusive as to the regularity of all proceedings leading up to and including such sale, and no instrument of conveyance of real estate made after confirmation of sale by the court shall be open to attack upon any grounds whatsoever except for fraud, and the confirmation by the court of any such sale shall be conclusive proof that all statutory provisions and all orders of the court with reference to such sale have been complied with.

Deed purporting to convey only interest in real estate given by community will give equitable title against both spouses, *Ryan v. Ferguson* 3 W. 356.

**§9987. Sale or Mortgage of Realty to Pay Legacy. §135.** When a testator shall have given any legacy by will that is effectual to charge real estate, and his goods, chattels, rights and credits shall be insufficient to pay such legacy, together with the debts and charges of administration, the executor or administrator, with the will annexed, may obtain an order to sell or mortgage his real estate for that purpose in the same manner and upon the same terms and conditions as prescribed in this chapter in case of a sale or mortgage for the payments of the debts.

**§9988. Insufficiency of Estate to Pay Debts. §136.** If the provision made by the will or the estate appropriated be not sufficient to pay the debts and expenses of administration and family expenses, such part of the estate as shall not have been disposed of by the will, if any, shall be appropriated for that purpose, according to the provisions of this chapter.

**§9989. Liability of Devises and Legacies for Debts. §137.** The estate, real and personal, given by the will to any legatees or devisees, shall be held liable for the payment of the debts, the expenses of administration and allowances to the family, in proportion to the value or amount of the several devises or legacies, if there shall not be other sufficient estate, except that specific devises or legacies may be exempted, if it appear to the court necessary to carry into effect the intention of the testator.

**§9990. Contribution Among Devisees and Legatees. §138.** When the estate given by any will has been sold for the payment of debts and expenses, all the devisees and legatees shall be liable to contribute, according to their respective interests, to any devisee or legatee from whom the estate devised to him may be taken for the payments of the debts or expenses; and the court, when distribution is made, shall, by decree for that purpose, settle the amount of the several liabilities and decree how much each person shall contribute.

**§9991. Sale of Decedent's Contract Interest in Lands. §139.** If the deceased person at the time of his death was possessed of a contract for the purchase of lands, his interest in such lands under such contract may be sold on the application of his executor or administrator in the same manner as if he died seized of such lands; and the same proceedings may be had for that purpose as are prescribed in this act in respect to lands of which he died seized, except as hereinafter provided.

**§9992. Purchaser's Bond to Secure Payments Coming Due. §140.** Such sale shall be made subject to all payments that may thereafter become due



on such contract, and if there be any such payments thereafter to become due such sale shall not be confirmed by the court until the purchaser shall have executed a bond to the executor or administrator for his benefit and indemnity, and for the benefit and indemnity of the persons entitled to the interest of the deceased in lands so contracted for, in double the whole amount of the payments thereafter to become due on such contract, with such sureties as the court shall approve.

**§9993. Conditions of Bond.** §141. Such bond shall be conditioned that the purchaser will make all payments for such land as shall become due after the date of such sale, and will fully indemnify the executor or administrator and the person so entitled against all demands, costs and charges and expenses, by reason of any covenant or agreement contained in such contract; but if there be no payments thereafter to become due on such contract, no bond shall be required of the purchaser.

**§9994. Assignment of Decedent's Contract.** §142. Upon the confirmation of such sale, the executor or administrator shall execute to the purchaser an assignment of the contract, which assignment shall vest in the purchaser, his heirs and assigns, all the right, title and interest of the persons entitled to the interest of the deceased in the land sold at the time of the sale, and such purchaser shall have the same rights and remedies against the vendor of such lands as the deceased would have had if living.

**§9995. Redemption of Mortgaged Estate.** §143. If any person die having mortgaged any real or personal estate, and shall not have devised the same, or provided for any redemption thereof by will, the court, upon the application of any person interested, may order the executor or administrator to redeem the estate out of the assets, if it should appear to the satisfaction of the court that such redemption would be beneficial to the estate and not injurious to creditors.

Mortgagee may bring independent action to foreclose—no deficiency judgment, *Denton v. Maple* 92 W. 290.

If mortgagee wants mortgage redeemed or property sold in administration he must apply within one year, *Scammon v. Ward* 1 W. 179.

"Devise" means a specific devise—attorney's fee not allowed, *In re Clement's Estate* 8 W. 323.

On the death of either spouse if redemption is not expedient property may be sold to pay mortgage, *Ryan v. Ferguson* 3 W. 356.

**§9996. Sale or Mortgage to Effect Redemption.** §144. If it shall be made to appear to the satisfaction of the court that it will be to the interest of the estate of any deceased person to sell or mortgage other personal estate or to sell or mortgage other real estate of the decedent than that mortgaged by him to redeem the property so mortgaged, the court may order the sale or mortgaging of any personal estate, or the sale or mortgaging of any real estate of the decedent which it may deem expedient to be sold or mortgaged for such purpose, which sale or mortgaging shall be conducted in all respects as other sales or mortgages of like property ordered by the court.

**§9997. Sale of, If Redemption Inexpedient.** §145. If such redemption be not deemed expedient, the court shall order such property to be sold at public or private sale, which sale shall be with the same notice and conducted in the same manner as required in other cases of real estate or personal property provided for in this act, and shall be sold subject to such mortgage, and the executor or administrator shall thereupon execute a conveyance thereof to the purchaser, which conveyance shall be effectual to convey to the purchaser all the right, title, and interest which the deceased had in the property, and the purchase money, after paying the expenses of the sale, shall be applied to the residue in due course of administration.

Mortgagee may foreclose—no deficiency judgment, *Denton v. Maple* 92 W. 290.

Sale for deficiency sustained, *Jones v. Seattle Brick & Tile Co.* 56 W. 166.

Sale is proceedings in rem and personal

notice to widow of decedent not necessary *Ryan v. Ferguson* 3 W. 356.

Lands sold to pay debts, mortgagee the purchaser paying but little more than mortgage, held good, *Dooly v. Russell* 10 W. 195.

§9998. **Sales Directed by Will.** §146. When property is directed by will to be sold, or authority is given in the will to sell property, the executor may sell any property of the the estate without the order of the court, and without any notice, and it shall not be necessary under such circumstances to make any application to the court with reference to such sales or have the same confirmed by the court.

## SPECIAL ADMINISTRATORS.

### X.—Special Administrators.

§9999. **Appointment of Special Administrator.** §81. When, by reason of an action concerning the proof of a will, or from any other cause, there shall be a delay in granting letters testamentary or of administration, the judge may, in his discretion, appoint a special administrator (other than one of the parties) to collect and preserve the effects of the deceased; and in case of an appeal from the decree appointing such special administrator, he shall, nevertheless, proceed in the execution of his trust until he shall be otherwise ordered by the appellate court.

Executor is a "party" within the statute  
Hartley v Lord 38 W. 432.

Insufficiency of showing for appointment  
is not jurisdictional, State ex rel. Warren v.  
Ayer 17 W. 127.

§10000. **Bond.** §82. Every such administrator shall, before entering on the duties of his trust, give bond, with sufficient surety or sureties, in such sum as the judge shall order, payable to the State of Washington, with condition as required of an executor or in other cases of administration.

§10001. **Powers and Duties.** §83. Such special administrator shall collect all the goods, chattels, and debts of the deceased, and preserve the same for the executor or administrator who shall thereafter be appointed; and for that purpose may commence and maintain suits as an administrator, and may also sell such perishable and other goods as the court shall order sold, and make family allowances under the order of the court, and he shall be allowed such compensation for his services as the said court shall deem reasonable.

Ex parte orders allowing administrator established, yet heir may resist claim—costs and attorney fees, vacated—administrator's prohibition, In re Sullivan's Estate, liable for attorney's fees—heirship not established—36 W. 217.

§10002. **Succession by Executor or Administrator.** §84. Upon granting letters testamentary or of administration the power of the special administrator shall cease, and he shall forthwith deliver to the executor or administrator all the goods, chattels, money and effects of the deceased in his hands, and the executor or administrator may be admitted to prosecute any suit commenced by the special administrator, in like manner as an administrator de bonis non is authorized to prosecute a suit commenced by a former executor or administrator.

§10003. **Non-liability to Creditors.** §85. Such special administrator shall not be liable to an action by any creditor of the deceased, and the time for limitation of all suits against the estate shall begin to run from the time of granting letters testamentary or of administration in the usual form, in like manner as if such special administration had not been granted.

§10004. **Rendition of Account.** §86. The special administrator shall also render an account, under oath, of his proceedings, in like manner as other administrators are required to do.

## SPECIFIC PERFORMANCE.

### XXI.—Specific Performance of Decedent's Contract.

§10005. **Order for Conveyance on Application of Executor.** §188. If any person, who is bound by contract, in writing, to convey any real property, shall die before making the conveyance, the superior court of the county in which the estate is being administered, may upon application of the



executor or administrator, without notice, make an order authorizing and directing the executor or administrator to convey such real property to the person entitled thereto.

Lessee having option to purchase may enforce option—consideration—reasonable price—arbitration, *Richardson v. Harkness* 59 W. 474.

This section not affected by direct descent act and heirs are not necessary parties, *Griggs Land Co. v. Smith* 46 W. 185.

This chapter does not abridge general equity jurisdiction, *Christ Church v. Bach* 7 W. 65.

Equitable title may be enforced, *Reese v. Murnan* 5 W. 373.

Legal title vests in executor for purposes of conveyance, *Hyde v. Heller* 10 W. 586.

Purchaser sought to rescind vendor's lien for advances, made qualified tender to executor prior to his qualification without complying with contract regarding payment of taxes, and offered to complete contract. Executor offered deed held, contract must be completed, *id.*

#### **§10006. Petition by Party Entitled to Conveyance—Notice to Executor.**

§189. If the executor or administrator fail to make such application, then any person claiming to be entitled to such conveyance under such contract, may present a petition setting forth the facts upon which such claim is predicated, and the court, or the judge thereof, shall make an order appointing a time for hearing such petition, and shall also order notice thereof and of the time of the hearing to be personally served upon the executor or administrator, by delivery to him of a copy of the same, together with a copy of the petition. If personal service cannot be had upon the executor or administrator, such service shall be made as the court may direct.

Notice by publication to administrator estate" is good, *Sander-Boman Co. v. Yesler Estate* 2 W. 429.

**§10007. Hearing.** §190. At the time appointed for such hearing, or at such other time as the same may be adjourned to, upon proof of service of the notice as herein provided, the court shall proceed to a hearing and determine the matter.

**§10008. Conveyance Under Order of Court.** §191. A conveyance executed under the provisions of this act shall so refer to the order authorizing the conveyance that the same may be readily found, but need not recite the record in the case generally, and the conveyance made in pursuance of such order shall pass to the grantee all the estate, right, title and interest contracted to be conveyed by the deceased, as fully as if the contracting party himself were still living and executed the conveyance in pursuance of such contract.

Commissioners to convey realty, §8094. Deed should not be executed until appeal has expired, *Sander-Boman Co. v. Yesler Estate* 2 W. 429.

**§10009. Filing Certified Copy of Order.** §192. A certified copy of the order shall be recorded with the deed in the office of the auditor of the county where the lands are, and shall be conclusive evidence of the correctness of the proceedings and of the authority of the executor or administrator to make such conveyance.

**§10010. Action in Case of Death of Person Entitled to Conveyance.** §193. If the person to whom the conveyance was to be made shall die before the commencement of the proceedings according to the provisions of this act or before the completion of the conveyance, any person who would have been entitled to the conveyance under him, as heir, devisee, or otherwise, in case the conveyance had been made according to the terms of the contract, or the executor or administrator of such deceased person, for the benefit of persons entitled, may commence such proceedings, or prosecute the same if already commenced; and the conveyance shall be so made as to vest the estate in the persons who would have been entitled to it, or in the executor or administrator for their benefit.

**§10011. Depositions of Witnesses.** §194. The testimony of witnesses concerning the claim may be taken by deposition whenever the deposition of such witnesses might be taken to be used in the trial of a civil action. The

notice of the time and place of taking such deposition, and the manner of such taking, shall be governed as is provided for in civil actions.

## VALIDATION.

**§10012. Validation of Prior Probate Proceedings.** §222. All probate proceedings heretofore conducted in this state, including sales and mortgages by executors, administrators and guardians, and all final settlements, made or had in conformity with the provisions of this act, or in conformity with the provisions of any prior law applicable thereto, are hereby declared valid.

**§10013. Repeal—Saving Clause.** §223. Sections 1278 to 1340, both inclusive, sections 1372 to 1692, both inclusive, and sections 1694 and 1320-1 of Remington & Ballinger's Annotated Codes and Statutes of Washington, and section 1693 of Remington & Ballinger's Annotated Codes and Statutes of Washington insofar as said section is meant to affect sales hereafter to be made under this act, and all other laws or parts of laws in conflict herewith, are hereby repealed: Provided, however, In all estates now in process of probate, where notice to creditors has been or is being given under any prior law, creditors shall have the time in such notices specified within which to present claims.

## VENUE.

### III.—Venue.

**§10014. Venue.** §6. Wills shall be proved and letters testamentary or of administration shall be granted:

1. In the county of which deceased was a resident or had his place of abode at the time of his death.
2. In the county in which he may have died, or in which any part of his estate may be, he not being a resident of the state.
3. In the county in which any part of his estate may be, he having died out of the state, and not having been a resident thereof at the time of his death.

Is residence jurisdictional?—prohibition will not lie—appeal, *State ex rel. Neal v. Kauffman* 86 W. 172.

hibition will not lie against either—appeal is remedy, *State ex rel. Warren v. Ayer* 17 W. 127.

Widow entitled to administration at domicile, *Gamble v. Dawson*, 67 W. 72.

Testator's residence is not jurisdictional and need not be shown in petition, *Higgins v. Nethery* 30 W. 239.

The domicile of the wife follows that of the husband, *Bucholz v. Bucholz*, 63 W. 213.

Foreign administrator has no standing in the courts of this state—property of deceased may be attached, *Barlow v. Coggan* 1 W. T. 258.

Letters must be granted in county of residence—special administrator in another county, *Stern v. Sill* 39 W. 557.

Accounting to foreign administrator on notes secured on realty in this state is sufficient, *McCoy v. Ayres* 2 W. T. 307.

Will executed in foreign country by person domiciled there may be proven in the first instance in this state, *In re Clayson's Estate* 26 W. 253.

Property in inventory is presumed to be within jurisdiction of court, *McCoy v. Ayres* 2 W. T. 203.

If two courts assume jurisdiction pro-

**§10015. Conflicting Jurisdictions.** §7. When the estate of the deceased is in more than one county, he not having been a resident of the state at the time of his death, the superior court of that county in which the application is first made for letters testamentary or of administration shall have exclusive jurisdiction of the settlement of the estate.

**§10016. Retention of Jurisdiction.** §8. All orders, settlements, trials and other proceedings, under this act shall be had or made in the county in which letters testamentary or of administration were granted.

Power to sign and transact business out side of county, §8643.



## WILLS, CONTEST OF.

## V.—Will Contests.

**§10017. Time of Filing—Issues—Time Extended.** §15. If any person interested in any will shall appear within six months immediately following the probate or rejection thereof, and by petition to the superior court having jurisdiction contest the validity of said will, or appear to have the will proven which has been rejected, he shall file a petition containing his objections and exceptions to said will, or to the rejection thereof. Issue shall be made up, tried and determined in said court respecting the competency of the deceased to make a last will and testament, or respecting the execution by a deceased of such last will and testament under restraint or undue influence or fraudulent representations, or for any other cause affecting the validity of such will. If no person shall appear within the time aforesaid, the probate or rejection of such will shall be binding and final as to all the world: Provided, however, Every infant, person absent from the United States or of unsound mind, in whom a right to contest any will heretofore probated or rejected exists by virtue of any prior law, shall have one year from and after this act goes into effect within which to initiate such contest: Provided further, That this act shall not have the effect of shortening the period given by any prior law to persons other than those mentioned in the last above proviso, within which to contest any will probated or rejected prior to the going into effect of this act.

Action of account against executrix W. 644.  
based on fraud cannot be sustained as contest after limitation, *Davis v. Seavey* 95 W. 57.

Notice to executor as an individual good, *In re Murphy's Estate* 98 W. 548.

Will incontestible in law or equity—laches, *In re Hoscheid's Estate* 78 W. 309.

Will contested for forging of signature of testatrix, will sustained, *In re Brown's Estate* 83 W. 528.

Wife's privilege to solicit will—testator excluded aged brothers and sisters, *Jasinto v. Hamblen* 79 W. 590.

Testatrix could not understand will drawn in English at the instance of beneficiaries, held not her will—attorney acting for testatrix, a beneficiary, could not claim privilege, *In re Beck's Estate* 79 W. 331.

Contest sustained on forgery of signature, *In re Connolly's Estate* 79 W. 168.

Testamentary capacity and changed sheet sustained, *In re Bacon's Estate* 91 W. 1.

Signature by mark and testamentary capacity sustained, *Points v. Nier* 91 W. 20.

Date of signing order by judge is date of probate to start the statute against contest, *State ex rel. Wood v. Superior Court* 76 W. 27. ?

Will incontestible after one year—fraud in probate is “cause affecting validity”—laches, *In re Hoschied's Estate* 78 W. 309.

Will contest survives, *Ingersoll v. Gourley* 72 W. 462.

Sons fidelity to mother to his advantage is not undue influence, *Converse v. Mix*, 63 W. 318.

Brother of testatrix is person interested, *In re Siebs Estate*, 70 W. 374.

Widow accepting legacy is estopped after one year, *Rader v. Stubblefield* 43 W. 339.

Husband coerced wife in last sickness, will held invalid, *In re Palmer's Will* 52

Wife contested husband's will charging insanity and drunkenness, will sustained—costs, *In re Rathjens Estate* 45 W. 55.

Sustained under the facts, *In re Wetmore's Estate* 44 W. 567.

Jury is advisory and may be discharged, *Rathjens v. Merrill* 38 W. 442.

Pleading stricken because not verified with leave to plead over second pleading in time though beyond one year, *In re Sullivan's Estate* 40 W. 202.

Under the facts held, there was want of testamentary capacity *Hartley v. Lord* 38 W. 221.

Contestants “believed” they had been legally adopted; held, they were not interested persons, *In re Renton's Estate* 10 W. 533.

Jury cannot be demanded as a matter of right, *In re Clayson's Estate* 26 W. 253.

Probate of will is prima facie case and burden is on contestant—non-expert witness may testify to mental condition—mental incapacity a long time prior to making of will will not establish incompetency against evidence of competency at time of making of will, *Higgins v. Nethery* 30 W. 239.

Facts held to warrant finding testator of unsound mind, *Richardson v. Moore* 30 W. 406.

Contract settling will contest held to include lands not described in deed referred to in contract, *Lamona v. Cowley* 31 W. 297.

Contest being provided for mandamus will not lie to compel superior court to hear motion to vacate order admitting will to probate, *State ex rel. Stratton v. Tallman* 25 W. 295.

Limitation applies to all persons not under disability, *Horton v. Barto* 57 W. 477.

Cited 76 W. 27. 90 W. 117.

**§10018. Citation on Contest.** §16. Upon the filing of the petition referred to in the next preceding section, a citation shall be issued to the executors who have taken upon themselves the execution of the will, or to the ad-

ministrators with the will annexed, and to all legatees named in the will residing in the state, or to their guardians if any of them are minors, or their personal representatives if any of them are dead, requiring them to appear before the court, on a day therein specified, to show cause why the petition should not be granted.

**§10019. Burden of Proof. §17.** In any such contest proceedings the previous order of the court probating, or refusing to probate, such will shall be prima facie evidence of the legality of such will, if probated, or its illegality, if rejected, and the burden of proving the illegality of such will, if probated, or the legality of such will, if rejected by the court, shall rest upon the person contesting such probate or rejection of the will.

Sanity and competency presumed until fact—no presumption in favor of heirs—contrary shown, *In re Murphy's Estate* 98 W. 548. will sustained, *Hunt v. Phillips* 34 W. 362.

Will in legal form burden is on contestant—belief in spiritualism not incapacity, court will not distribute estate until appeal determined, *State ex rel. Richardson v. Superior Court* 28 W. 677. *In re Hanson's Estate* 87 W. 113.

Contestant must prove every material

**§10020. Revocation of Probate. §18.** If, upon the trial of said issue, it shall be decided that the will is for any reason invalid, or that it is not sufficiently proved to have been the last will of the testator, the will and probate thereof shall be annulled and revoked, and thereupon and thereafter the powers of the executor or administrator with the will annexed shall cease, but such executor or administrator shall not be liable for any act done in good faith previous to such annulling or revoking.

**§10020a. Costs. §19.** If the probate be revoked or the will annulled, assessment of costs shall be in the discretion of the court. If the will be sustained, the court may assess the costs against the contestant, which costs may in the discretion of the court include a reasonable attorney's fee.

Costs of unsuccessful contestant cannot and collection, *In re Statler's Estate* 58 W. be paid from the estate, *Jasinto v. Hamblen* 199. 79 W. 590.

Costs allowed if will defeated—allowance estate if cause of contest probable, *In re Gorkow's Estate* 20 W. 563. Court may allow contestant costs out of

## WILLS, EXECUTION OF.

### VIII.—Wills.

**§10021. Who May Make. §24.** Every person who shall have attained the age of majority, of sound mind, may by last will devise all his or her estate, real and personal.

Abuse of discretion to award costs against contestant making prima facie case, *In re Eichler's Estate* 102 W. 497.

Wills—special acts of legislature validate—Father may by last will appoint guardian for child, §9912.

Special act of legislature validating prohibited, Const. art. 2, §28.

Testamentary capacity means business capacity. *In re Gorkow's Estate* 20 W. 563.

Bequest to maker of note, transaction of business under will is not construction of it, nor does sale of note adjudicate liability of maker, *Martin v. Barger* 62 W. 672.

Construed to include property generally in directing bequest—legacies not debts and paid from cash on land, *In re Lotzgesell's Estate* 62 W. 352.

Delivery of note and mortgage held gift causa mortis, *Hamlin v. Hamlin* 59 W. 182.

Deeds by testators and deeds by grantees held testamentary disposition of property, *Simmons v. Macomber* 60 W. 469.

Deed in escrow held a gift, *Maxwell v. Harper* 51 W. 351.

Governed by laws in force at testator's death, *Strand v. Stewart* 51 W. 685.

Tulalip Indian can not devise lands, *Jackson v. Thompson* 38 W. 282.

Testator without testamentary capacity—burden of proof—jury advisory, *Rathjens v. Merrill* 38 W. 442.

The courts in probate have power to construe wills, *Webster v. Seattle Trust Co.* 7 W. 642.

Law of situs of property controls rather than of domicile to testator in construction of will—charitable uses, *In re Stewart's Estate* 26 W. 32.

Cited 83 W. 231.

**§10022. How Executed—Exception as to Foreign Wills. §25.** Every will shall be in writing signed by the testator or the testatrix, or by some other person under his or her direction in his or her presence, and shall be attested by two or more competent witnesses, subscribing their names to the will in the presence of the testator by his direction or request: Provided, however, that a last will and testament, executed without this state, in the mode prescribed by law, either of the place where executed or the testator's domicile, shall be deemed to be legally executed, and shall be of the



same force and effect as if executed in the mode prescribed by the laws of this state.

Will signed by testator out of presence of witnesses, and by witnesses out of presence of testator, invalid, *In re Jones' Estate* 101 W. 128.

Will without witnesses invalid — holographic will invalid, *In re Brown's Estate* 101 W. 314.

Making mark is signing under above

section, *Wilson v. Craig* 86 W. 465; *Points v. Nier* 91 W. 20.

Surviving attesting witness testifying that deceased witness and testator signed will prove execution of last will, *In re Harris Estate* 10 W. 555.

Cited 86 W. 465. 87 W. 44.

**§10023. Interest on Devises.** §26. No interest shall be allowed or calculated on any devise contained in any will unless such will expressly provide for such interest.

**§10024. Testator's Signature by Subscribing Witness.** §27. Every person who shall sign the testator's or testatrix's name to any will by his or her direction shall subscribe his own name as a witness to such will and state that he subscribed the testator's name at his request.

**§10025. Revocation, How Effected.** §28. No will in writing, except in cases hereinafter mentioned, nor any part thereof, shall be revoked except by a subsequent will in writing, or by burning, canceling, tearing, or obliterating the same, by the testator or testatrix, or in his or presence, by his or her consent or direction.

Will may be revoked by a writing made poses of no property, *In re Pierce's Est.*, with the solemnity of a will, though it dis- 63 W. 437.

**§10026. Subsequent Marriage of Testator—Divorce.** §29. If, after making any will, the testator shall marry and the wife, or husband, shall be living at the time of the death of the testator, such will shall be deemed revoked, unless provision shall have been made for such survivor by marriage settlement, or unless such survivor be provided for in the will or in such way mentioned therein as to show an intention not to make such provision, and no other evidence to rebut the presumption of revocation shall be received. A divorce, subsequent to the making of a will, shall revoke the will as to the divorced spouse.

Parol agreement that wife shall have no interest void, *Koontz v. Koontz* 83 W. 180.

Section applies to testatrix, *In re Van Guelpin's Estate* 87 W. 146.

Cited 78 W. 309.

Will of feme sole is revoked if her husband survives her, *In re Petridge's Will* 47 W. 77.

Wife provided for before becoming wife does not revoke will, *In re Adler's Estate* 52 W. 539.

**§10027. Agreements to Convey Property Not to Effect Revocation of Will.** §30. A bond, covenant, or agreement made for a valuable consideration by a testator to convey any property, devised or bequeathed in any last will previously made, shall not be deemed a revocation of such previous devise or bequest, but such property shall pass by the devise or bequest, subject to the same remedies on such bond, covenant, or agreement, for specific performance or otherwise, against devisees or legatees, as might be had by law against the heirs of the testator or his next of kin, if the same had descended to him.

**§10028. Charges or Encumbrances Not to Effect Revocation.** §31. A charge or encumbrance upon any real or personal estate for the purpose of securing the payment of money, or the performance of any covenant or agreement, shall not be deemed a revocation of any will relating to the same estate, previously executed. The devises and legacies therein contained shall pass and take effect, subject to such charge or encumbrance.

**§10029. Intestacy as to Children Not Named.** §32. If any person make his last will and die leaving a child or children or descendants of such child or children not named or provided for in such will, although born after the making of such will or the death of the testator, every such testator, as to such child or children not named or provided for, shall be deemed to die intestate, and such child or children or their descendants shall be entitled to such proportion of the estate of the testator, real and personal,

as if he had died intestate, and the same shall be assigned to them, and all the other heirs, devisees and legatees shall refund their proportional part.

Abstract showing posthumous child with no provision for it in will is not "marketable title," *Moore v. Elliott* 76 W. 520.

"My children" and "any child which may be hereafter born" provides for children, *Gehlen v. Gehlen* 77 W. 17. 409 §41.

Children not mentioned will sustained and title diverted contrary to 409 §41, *In re Astlund's Estate* 57 W. 359.

This section yields to later section relating to agreements by husband and wife regarding property, *McKnight v. McDonald* 34 W. 98.

Applies to adopted child—property to wife in divorce is not advancement to child—will not set aside but child shall take, *Van Brocklin v. Wood* 38 W. 384.

Will is valid except as to children not named, *Webster v. Seattle Trust Co.* 7 W. 642.

Illegitimate child provided for in other than real name, *In re Gorkow's Estate* 20

W. 563.

It is not competent to show by parol evidence that testator had his children in mind and intention to provide for them in devising all his property to his wife *Bower v. Bower* 5 W. 225; *Hill v. Hill* 7 W. 409; *Morrison v. Morrison* 25 W. 466.

Bequest of entire estate to husband or wife held ineffectual as to children—remedy is to administer, *In re Baker's Estate* 5 W. 390; *Morrison v. Morrison* 25 W. 466.

Statute applies to community and separate property, *Hill v. Hill* 7 W. 409.

Subsequent will failing to provide for children will not be construed as codicil of former will making provision, *Mason v. McLean* 6 W. 31.

Will held bad as against child not provided for, *Purdy v. Davis* 13 W. 164.

Children may be disinherited, but purpose must be definitely shown, *Boman v. Boman* 47 Fed. Rep. 849; reversed (C. C. A.) 49 Fed. Rep. 329.

**§10030. Advancements.** §33. If such child or children or their descendants, shall have an equal proportion of the testator's estate bestowed on them in the testator's lifetime, by way of advancement, they shall take nothing by virtue of the provisions of the preceding section. Nothing shall be considered an advancement unless charged in writing by the decedent as an advancement, or acknowledged in writing as such by the child or other successor or heir.

**§10031. Death of Devisee Before Testator.** §34. When any estate shall be devised to any child, grandchild, or other relative of the testator, and such devisee shall die before the testator, having lineal descendants, such descendants shall take the estate, real and personal, as such devisee would have done in case he had survived the testator. A spouse is not a relative under the provisions of this section.

Lineal descendants confined to children if descent by law, *In re Roberts Estate* 84 W. 163.

Wife is not a "relative" and her children cannot contest will, *In re Kenton's Estate* 10 W. 533.

**§10032. Revival of Prior Will by Revocation of Subsequent.** §35. If, after making any will, the testator shall duly make and execute a second will, the destruction, cancellation, or revocation of such second will shall not revive the first will unless it appears by the terms of such revocation that it was his intention to revive and give effect to the first will, or unless he shall duly republish his first will.

**§10033. Nuncupative Wills.** §36. No nuncupative will shall be good when the estate bequeathed exceeds the value of two hundred dollars (\$200.00) unless the same be proved by two witnesses who were present at the making thereof, and it be proven that the testator, at the time of pronouncing the same, did bid some person present to bear witness that such was his will, or to that effect, and such nuncupative will was made at the time of the last sickness. Nothing herein contained shall prevent any mariner at sea or soldier in the military service from disposing of his wages or other personal property by nuncupative will. No real estate shall be devised by a nuncupative will.

Realty cannot be conveyed by nuncupative will, *Irwin v. Rogers* 91 W. 284.

Written will invalid, spoken words are not nuncupative will, *Brown v. State* 87 W. 44.

Lawful heirs cannot be deprived of estate by nuncupative will unless all formalities of the statute are observed and clear proof is made—will not established in this case, *O'Callaghan v. O'Brien* 116 Fed. Rep. 934.

**§10034. Proof of Nuncupative Will.** §37. No proof shall be received of any nuncupative will unless it be offered within six months after speaking the testamentary words, nor unless the words or the substance thereof be first committed to writing, and in all cases a citation issued to the widow



or next of kin of the deceased that they may contest the will if they think proper.

Proof offered after six months, properly cause proper service not made—burden of rejected, *In re Brown's Estate* 101 W. 314. proof, *In re Sullivan's Estate* 40 W. 202.

Delay not excusable since immediate Method of proof and contest is mandatory proof might have been made under 409 and order of state court entered on same §§95, 105, *In re Greenleaf's Estate*, 69 W. day as petition presented admitting will to probate is void, *O'Callaghan v. O'Brien* 116 478.

Petition in time right not defeated be Fed. Rep. 934.

**§10035. Devises, Etc., to Subscribing Witnesses.** §38. All beneficial devises, legacies, and gifts whatever, made or given in any will to a subscribing witness thereto, shall be void unless there are two other competent witnesses to the same; but a mere charge on the estate of the testator for the payment of debts shall not prevent his creditors from being competent witnesses to his will. If such witness, to whom any beneficial devise, legacy or gift may have been made or given, would have been entitled to any share in the testator's estate in case the will is not established, then so much of the estate as would have descended or would have been distributed to such witness shall be saved to him as will not exceed the value of the devise or bequest made to him in the will; and he may recover the same from the devisees or legatees named in the will in proportion to and out of the parts devised and bequeathed to him.

**§10036. Devises of Land.** §39. Every devise of land in any will shall be construed to convey all the estate of the devisor therein which he could lawfully devise, unless it shall clearly appear by the will that he intended to convey a less estate.

The intent to convey less estate must be clear, *Reeves v. School District* 24 W. 282.

**§10037. Estates for Life.** §40. If any person, by last will, devise any real estate to any person for the term of such person's life, such devise vests in the devisee an estate for life, and without the remainder is specially devised, it shall revert to the heirs at law of the testator.

Will amended to conform to facts—in extremis defined, *In re Miller's Estate* 47 W. 253.

**§10038. After-acquired Estates.** §41. Any estate, rights or interest in lands acquired by the testator after the making of his or her will shall pass thereby, and in like manner as if owned at the time of making the will, if such manifestly appear by the will to have been the intention of the testator.

**§10039. Contribution Among Legatees and Heirs.** §42. When any testator in his last will shall give any chattel or real estate to any person, and the same shall be taken in execution for the payment of the testator's debts, then all the other legatees, devisees and heirs shall refund their proportional part of such loss to such person from whom the bequest shall be taken.

Failure to require that realty be placed in inventory does not estop heirs, *Showalter v. Spangle* 93 W. 326.

**§10040. Enforcement by Court.** §43. When any devisees, legatees or heirs shall be required to refund any part of the estate received by them, for the purpose of making up the share, devise or legacy of any other devisee, legatee or heir, the superior court, upon the petition of the person entitled to contribution or distribution of such estate, may order the same to be made and enforce such order.

**§10041. Codicils Included in "Will."** §44. The term "will," as used in this chapter, shall be so construed as to include all codicils attached to any will.

**§10042. Intent of Testator Followed by Courts.** §45. All courts and others concerned in the execution of last wills shall have due regard to the direction of the will, and the true intent and meaning of the testator, in all matters brought before them.

Construction of provisions for debts, special bequests and remainders, *McCullough v. Lauman* 38 W. 227.

"Half-brothers" may be shown to be

"brothers-in-law," Rathjens v. Merrill 38 W. 442.

A will aside from specific bequests declared void for uncertainty Cross v. Cross 23 W. 672.

Parol evidence is not admissible to add to will, Taylor v. Horst 23 W. 446.

Will and codicil must be construed together—precatory clause disregarded if conflicting, Hunt v. Hunt 18 W. 14.

Administrator of legatee is entitled to

legacy against executor, Rogers v. Strobach 15 W. 472.

Technical words of conveyance in devise not necessary, Webster v. Thorndyke 11 W. 390.

Testator cannot by will recognize and make property acquired during cohabitation, though the parties afterward marry, community property, his heirs will take all of the estate against his express purpose, Hatch v. Ferguson 57 Fed. Rep. 966; affirmed (C. C. A.) 68 id. 43.

**§10043. Construction of Words Importing Number and Sex.** §46. Words in this chapter contained, or in this act, which import the singular number only, may also be applied to the plural of persons and things, and words importing the masculine gender only may be extended to females also, when such construction shall be necessary.

Remarriage revoking will applies to testatrix, In re Van Guelpen's Estate 87 W. 146.

Will of feme sole revoked by marriage and survival of husband, In re Petridge's Will 47 W. 77.

## WILLS, FOREIGN.

### VII.—Foreign Wills.

**§10044. Admission to Probate in This State.** §22. Wills probated in any other state or territory of the United States, or in any foreign country or state, shall be admitted to probate in this state on the production of a copy of such will and of the original record of probate thereof, authenticated by the attestation of the clerk of the court in which such probation was made; or if there be no clerk, by the attestation of the judge thereof, and by the seal of such officers, if they have a seal.

Foreign will probated in this state—auxiliary administration—law of domicile, Rader v. Stubblefield 43 W. 334.

Necessity of administration in this state, State ex rel. Mann v. Superior Court 52 W. 149.

Making foreign wills, §10022.

Foreign wills should be probated in this state Shufeldt v. Hughes 55 W. 246.

Devisee pending administration cannot maintain ejectment, Dunn v. Peterson 4 W. 170.

**§10045. Carried into Effect Under Domestic Laws.** §23. All provisions of law relating to the carrying into effect of domestic wills after probate thereof shall, so far as applicable, apply to foreign wills admitted to probate in this state.

## WILLS, LOST, ETC.

### VI.—Lost or Destroyed Wills.

**§10046. Proof of.** §20. Whenever any will be lost or destroyed, the superior court shall have power to take proof of the execution and validity of such will and to establish the same, notice to all persons interested having been first given. Such proof shall be reduced to writing and signed by the witnesses and filed with the clerk of court.

**Necessary Facts to Establish Loss or Destruction—Record of Judgment.** No will shall be allowed to be proved as a lost or destroyed will unless the same shall be proved to have been in existence at the time of the death of the testator, or be shown to have been fraudulently destroyed in the lifetime of the testator, nor unless its provisions shall be clearly and distinctly proved by at least two witnesses, and when any such will shall be so established, the provisions thereof shall be distinctly stated in the judgment establishing it, and such judgment shall be recorded as wills are required to be recorded. Executors of such will or administrators with the will annexed may be appointed by the court in the same manner as is



herein provided with reference to original wills presented to the court for probate.

Two witnesses must testify of their own knowledge, and not merely hearsay. *In re Needham's Estate*, 70 W. 229. Restoration of lost records, §7780. Provisions of will must be proven by at least two witnesses—presumption of re-  
*In re Needham's Estate*, 70 W. 229. vocation—allegation of existence, *In re Harris' Estate* 10 W. 555.

§10047. **Acting Administrators Restrained Pending Establishment.** §21. If, before or during the pendency of an application to prove a lost or destroyed will, letters of administration shall have been granted on the estate of the testator, or letters testamentary of any previous will of the testator shall have been granted, the court shall have authority to restrain the administrators or executors so appointed, from any acts or proceedings which would be injurious to the legatees or devisees claiming under the lost or destroyed will.

## WILLS, PROBATE OF.

### IV.—Custody, Proof and Probate of Wills.

§10048. **Delivery of Will by Custodian—Penalty.** §9. Any person having the custody or control of any will shall, within thirty days after he shall have received knowledge of the death of the testator or testatrix, deliver said will to the superior court having jurisdiction, or to the person named in the will as executor or executrix; and any executor or executrix having in his custody or control any will shall within forty days after he received knowledge of the death of the testator or testatrix either present the same for probate to the court having jurisdiction, or present the same to such court with his written refusal to serve as such executor or executrix; any person who shall wilfully violate any of the provisions of this section with intent to injure or defraud any person shall be deemed guilty of a gross misdemeanor, and any person who shall without reasonable excuse violate any of the provisions of this section shall be liable to any person interested in the will for damages caused by such neglect.

Nature of action for failure to deliver will—limitation. *Myers v. Exchange Nat. Bank* 96 W. 244. *Pond v. Faust* 90 W. 117. Where a will has been filed the court may probate it without formal petition, *In re Pierce's Est.*, 63 W. 437.

Prior to death no legal action can be taken respecting will — guardian cannot compel cancellation of will of insane ward. *Formal petition for probate not necessary*, *In re Pierce's Est.*, 63 W. 437.

§10049. **Application for Probate—Order of Court.** §10. Applications for the probate of a will and for letters testamentary, or either, may be made to the judge of the court having jurisdiction and the court may immediately hear the proofs and either probate or reject such will as the testimony may justify. Upon such hearing the court shall make and cause to be entered a formal order, either establishing and probating such will, or refusing to establish and probate the same, and such order shall be conclusive as against all the world except in the event of a contest of such will as hereinafter provided. All testimony in support of the will shall be reduced to writing, signed by the witnesses, and certified by the judge of the court.

Will is admitted when judge signs order and limitation against contest begins to run, *State ex rel. Wood v. Superior Court* 76 W. 27. *Montrose v. Byrne* 24 W. 288. In proof of will there must be proof of sanity of testator, *In re Baldwin's Estate* 13 W. 666.

Will can only be proven, not construed. Cited 90 W. 117.

§10050. **Commission to Take Testimony of Attesting Witnesses.** §11. If any witness be prevented by sickness from attending at the time any will is produced for probate, or reside out of the state or more than thirty miles from the place where the will is to be proven, such court may issue a commission annexed to such will, and directed to any judge, justice of the peace, notary public, or other person, empowering him to take and certify the attestation of such witness.

Taking of depositions. §7726. *formed Presbyterian Church etc. v. McMillan* 31 W. 643. Depositions may be taken in probate, *Re-*

**§10051. Death or Insanity of Witness.** §12. When one of the witnesses to any such will shall be examined and the other witness or witnesses are dead, insane, or their residence be unknown, then proof shall be taken of the handwriting of the testator and of the witness dead, insane, or whose residence is unknown, and all such other circumstances as would tend to prove such will.

**Proof of Handwriting of Testator and Witnesses.** If it should appear to the satisfaction of the court that all the subscribing witnesses to any such will are dead, insane, or their residence unknown, the court shall take and receive proof of the handwriting of the testator and subscribing witnesses to the will and such other facts and circumstances as would tend to prove such will.

One witness uncontradicted will prove last will. *In re Harris Estate* 10 W. 555.

**§10052. Filing and Recording Wills.** §13. All wills shall be recorded in the book kept for that purpose, within thirty days after probate, and the original wills shall be carefully filed with the clerk, but may be withdrawn on the order of the court.

Probate gives notice if not recorded, *Horton v. Barto* 57 W. 477.

**§10053. Record as Evidence.** §14. The record of any will made, probated and recorded as herein provided, and the exemplification of such record by the clerk in whose custody the same may be, shall be received as evidence, and shall be as effectual in all cases as the original would be if produced and proven.





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to to	609—8201	949—9131-64	to to	to to	2364—581
297—8108	to to	956—9132	1252—9131-84	1920—9583	2367—6558
298—8127	622—8213	957—9133	1254—9131-48	1921—9597	2370—4346
299—8128	635—8214	958—9134	to to	to to	to to
300—8129	636—8215	959—9391	1257—9131-51	1937—9613	2379—4355
301—8081	to to	to to	1272—9131-121	1938—9649	2396—1420
to to	643—8223	962—9396	1273—9131-122	1939—9690	to to
319—8093b	644—8465	963—9275	1286—9131-9	1940—9703	2418—1442
322—8121	to to	964—9276	1287—9131-10	1972—9734	2419—135
323—8125	651—8472	965—9277	1290—9352	1973—9735	2420—136
		967—9357	1291—9353	1974—9736	2421—4544
		to to	1292—9193	1975—9666	2422—4505
		970—9360	to to	1976—9667	2423—4515
			1296—9196		

C81—PC	C81—PC	C81—PC	C81—PC	C81—PC	C81—PC
to to	2547—2075	2689—1678	to to	3048—6036	3148—2198
2449—4539	2548—2076	2690—1719	2795—1755	3049—1265	3150—2155
2488—2370	2549—2077	2692—1844	2796—1462	3051—2079	3151—2156
to to	2550—3703	2693—1845	to to	to to	3242—483
2500—2382	to to	2694—1846	2801a—1467a	3060—2086	to to
2450—4613	2554—3706	2695—1679	3002—2388	3062—2348	3247—488
to to	2557—7283	2696—1693	to to	to to	3252—3650
2454—4617	to to	to to	3015—2401	3066—2351	to to
2455—7626	2562—7288	2706—1703	3016—6188	3068—2201	3270—3668
to to	2571—6604	2707—1621	to to	to to	3271—7268
2472—7645	2572—1619	to to	3029—6201	3087—2221	to to
2482—4663	2580—3707	2737—1650	3030—6060	3088—2168	3274—7271
to to	to to	2738—1817	3031—6060a	to to	3279—178
2486—4667	2595—3722	to to	3032—6060b	3104—2188	to to
2518—1945-41	2653—1468	2750—1830	3033—525	3105—2121	3292—191
2532—3766	to to	2766—1796	3034—526	to to	3295—4411
to to	2662—1477	to to	3035—527	3139—2154	3296—4412
2536—3770	2663—1656	2774—1802	3041—6029	3140—2190	3302—9847
2537—9131-32	to to	2775—1733	to to	to to	to to
					3307—9862

CROSS REFERENCES HILL'S CODE TO PIERCE'S CODE

1HC—PC	1HC—PC	1HC—PC	1HC—PC	1HC—PC	1HC—PC
1—1500	275—1657	426—2188	to to	1381—3707	1441—7920
to to	to to	427—2121	1169—4387	1382—3709	1442—1929
36—1561	280—1662	to to	1170—4410	1383—3715	1443—1443
52—3575	281—1664	443—2139	1181—4392	1384—3710	to to
to to	282—1667	445—2155	1182—4390	to to	1451—1451
59—3582	283—1670	446—2156	1183—4411	1388—3714	1452—7744
61—6649	284—1673	447—2323	1184—4388	1389—3716	1453—1745
to to	285—1677	to to	1185—9336	1390—3708	1454—1746
66—6654	286—1675	467—2343	to to	1391—3717	1455—1421
67—6678	287—1678	468—2261	1188—9339	to to	1456—9769
to to	288—1672	to to	1189—3418	1396—3722	1457—9770
78—6783	289—1671	492—2285	1192—9334	1397—1432	1480—9847
80—6581	290—1674	493—637	1193—9335	1398—1424	to to
to to	294—1663	to to	1194—3405	1399—1433	1649—9862
104—6603	295—1668	514—659	to to	1400—1434	1497—4504
105—6691	296—1676	515—673	1206—3417	1401—1440	1498—4505
to to	297—1665	to to	1207—6730	1402—1428	1499—4514
115—6705	298—1679	523—681	1208—6731	1403—1437	to to
117—6579	299—9449	661—825	1217—6732	1404—1439	1523—4539
118—6580	to to	to to	to to	1405—1438	1524—4657
151—8660	317—9461	693—855	1225—6738a	1406—1441	to to
164—8626	318—9447	702—5440	1227—6761	1407—1442	1532—4667
165—8627	319—1462	to to	to to	1408—1420	1535—5663
166—8636	to to	718—5456	1233—6767	1409—1422	to to
167—8637	323—1467a	722—5476	1234—2814	1410—1430	1538—5668
168—1796	328—1801	723—5477	1235—2815	1411—1425	1539—5670
169—1799	329—4269	737—883	1236—2818	1412—1426	1540—5703
170—1800	to to	to to	1245—2822	1413—1429	1541—5704
171—1802	338—4278	742—888	1246—2823	1414—1431	1542—5705
174—8581	339—1418	743—1176	1247—2841	1415—1423	1543—5709
175—8582	340—1419	744—1178	1248—2827	1416—580	1544—5710
179—1621	341—2348	775—1179	to to	1417—581	1545—4713
to to	342—2349	746—1265	1253—2832	1418—9813	1546—4714
184—1627	343—2351	747—1266	1254—2834	to to	1547—4711
185—6606	345—2082	748—1267	1255—2835	1421—9816	1548—7696
186—1628	346—2081	749—1182	1256—2836	1422—1909	1549—7697
to to	347—4500	to to	1257—2839	1423—1910	1550—4712
209—1650	to to	753—1186	1258—2840	1424—1924	1551—7796
210—1817	350—4503	754—1172	1259—2842	1425—1925	1552—7788
to to	351—2083	to to	1260—2845	1426—1926	to to
220—1830	to to	757—1175	1262—2820	1427—1912	1559—7795
224—1787	354—2086	758—1177	1263—2843	1428—1913	1560—7797
to to	355—2201	759—1269	1264—2844	1429—1911	1561—4715
233—1795	to to	to to	1266—2838	1430—1915	to to
245—1733	362—2208	765—1276	1278—2824	1431—1916	1566—4719
to to	363—2098	766—8374	1279—2846	1432—1917	1567—8146
264—1755	to to	767—8375	1280—2825	1433—1918	1569—7626
265—1656	396—2119	768—8376	1284—6239	1434—1915	to to
266—1686	398—2209	939—4780	1289—6240	1435—1920	1587—7645
269—1689	to to	946—4781	1290—6246	1436—1921	1588—4536
to to	409—2221	956—4782	to to	1437—1928	1589—7719
272—1692	410—2168	957—4783	1296—6253	1438—1922	1590—4552
273—1666	to to	1141—4363	1297—1703		



7HC—PC	1HC—PC	1HC—PC	2HC—PC	2HC—PC	2HC—PC
1638—4613	to to	2530—98/6a	2950—136	24—9565	to to
to to	2139—7271	2531—3548	2957—2748	25—9433	170—8554
1642—4617	2177—6503-23	2532—3549	2958—2749	26—9567	186—8342
1643—4689	2181—7112	2533—3550	2961—7289	27—9458	to to
1644—4690	2182—6539	2544—2370	2971—8642	28—9561	202—8367
1645—4691	to to	to to	3003—1603	29—9562	203—8383
1646—9746	2186—6543	2560—2387	3004—1604	30—8560	204—8384
1647—1927	2210—3771	2561—5989	3006—1609	31—8561	205—8368
1648—9747	to to	2562—5990	to to	32—8564	to to
1649—9748	2216—3777	2563—5991	3012—1615	to to	212—8378
1650—9751	2246—3792	2564—6706	3015—1617	40—8572	213—8379
to to	to to	to to	3016—1618	42—2699	to to
1657—9758	2271—3817	2567—6709	3018—1605	43—2703	216—8382
1658—9749	2300—4471-5	2584—9131-46	3019—7488	44—2700	217—8332
1659—9750	to to	2598—3766	to to	45—2701	to to
1660—9744	2314—4471-19	to to	3030—7498	46—8573	226—8341
1661—9745	2339—483	2602—3770	3031—9210	47—8640	228—7350
1678—9699	to to	2603—489	3044—6559	48—8574	to to
1695—9666	2344—488	2604—492	3045—6570	49—8575	254—7378
1696—9668	2358—3696	2605—490	3046—9131-86	50—8140	255—8421
1699—9655	to to	2606—5277	3047—9131-87	to to	to to
to to	2364—3702	to to	3048—1616	54—8144	265—8431
1704—9660	2368—3689	2619—5292	3049—9209	56—8145	266—8052
1706—9654	2369—3690	2621—5336	3050—9203	63—8147	to to
1707—9665a	2370—83	to to	to to	64—8148	287—8073
1708—9665b	2371—84	2658—5373	3053—9207	65—8149	288—7379
1709—7710	2372—193	2674—5405	3054—9212	66—8150	to to
to to	2373—194	to to	3055—9208	67—8531	324—7411
1717—7718	2374—195	2682—5413	3055a—9211	69—8578	325—8413
1718—3275	2418—7283	2683—5414	3059—1710	70—8579	to to
to to	to to	to to	to to	71—8583	332—8420
1783—3347	2423—7288	2690—5421	3065—1717	72—8584	333—8473
1784—3197	2426—577	2710—9675	3079—3765-148	73—8585	to to
to to	2427—578	2711—9676	to to	74—8586	336—8476
1861—3274	2428—3749	2712—2811	3082—3765-151	75—8587	338—8475
1862—7266	to to	2741—2854	3083—6440	76—1803	339—8489
1962—6037	2431—3752	to to	to to	77—1804	to to
1963—6042	2432—7745	2755—2868	3086—6443	78—1805	370—8521
1964—6043	2433—582	2797—3553	3087—1693	79—1797	371—8522
1965—6020	2434—583	2798—3554	to to	80—1798	372—8523
1966—6021	2435—584	2799—3555	3096—1702	81—1737	373—8526
1969—6044	2436—1930	2801—3556	3097—8677	82—1806	to to
1971—6045	2437—1468	2814—3196-2	to to	83—8576	377—8530
1972—6046	to to	2815—3196-3	3102—8682	84—6579	379—8486
1974—6047	2446—1477	2816—3196-4	3122—9734	85—1780	380—8487
1975—6048	2447—1843	2824—3625	to to	86—1781	381—8532
1976—6049	2458—1847	2825—3650	3124—9736	87—1783	to to
1977—6050	to to	to to	3131—6618	88—1785	389—8540
2022—6016	2466—1854a	2843—3668	3132—6619	89—1786	399—8224
2023—617	2467—1478	2855—1931	3133—6620	96—180	to to
2024—6029	to to	2882—4268	3147—9131-9	to to	405—8230
to to	2476—1487	2883—9131-69	3148—9131-10	103—187	406—8078
2031—6036	2488—2016	to to	3149—7267	107—191	407—8079
3032—6212	to to	2899—9131-84	2HC—PC	108—8252	409—8122
to to	2495—2023	2900—508	1—8666	109—8253	410—8123
2047—6227	2496—3703	to to	2—8669	110—8254	411—8124
2048—6188	to to	2916—524	3—8664	111—8160	412—8109
to to	2500—3706	2917—4346	4—8667	112—8161	413—8110
2061—6201	2501—9729	to to	5—8665	113—8162	414—8102
2064—6060	to to	2926—4355	7—8670	114—7542	to to
to to	2505—9733	2936—1844	8—8674	115—8166	420—8108
2067—6060b	2506—1953	2937—1845	9—8668	to to	422—8127
2068—525	2507—2075	2938—1846	10—8628	133—8185	423—8128
to to	2508—2076	2939—6658	12—8629	134—8255	424—7339
2076—533	2509—2077	2940—1651	13—8630	to to	to to
2077—535	2510—2050a	2941—9352	14—8631	152—8279	434—7349
2078—536	2511—2050c	to to	15—8645	153—8282	435—8081
2079—537	2514—9131-33	2945—9356	16—8646	154—8283	to to
2104—2388	2515—9131-34	2946—9231	17—8632	155—8284	439—8084
to to	2516—9131-32	2948—7110	18—8635	156—8280	440—8090
2117—2401	2517—2028	2949—7111	19—8638	157—8281	to to
2128—6513	to to	2950—7116	20—8634	158—8541	445—8093b
to to	2520—2031	to to	21—8633	to to	446—8085
2135—6520	2522—9869	2954—7120	22—9563	163—8545	447—8086
2136—7268	to to	2955—135	23—9564	164—8548	448—8087

2HC—PC	2HC—PC	2HC—PC	2HC—PC	2HC—PC	2HC—PC
450—8116	664—8231	822—8481	1292—9189	1482—9595	1609—9131-121
451—8088	to to	823—7456	1293—9190	1483—9566	1610—9131-122
454—8089	667—8234	824—7457	1294—9191	1484—9410	1630—9401
461—8121	668—7412	to to	1296—9361	to to	to to
464—7827	669—7413	844—7476	1297—9362	1489—9415	1638—9409
465—7830	670—7414	1188—9340	1298—9365	1490—9614	1639—9444
466—7829	671—8393	1189—9132	to to	to to	1640—9445
467—7831	to to	1190—9133	1306—9373	1500—9624	1641—9446
468—7828	675—8397	1191—9393	1307—9214	1517—9427	1642—9575
469—7832	676—8074	1192—9394	1308—9217	1518—9556	1643—9576
to to	677—8075	1193—9391	1309—9218	1519—9640	1644—9577
471—7834	678—8076	1194—9392	1310—9374	1520—9641	1645—7721
472—7841	679—8398	1195—9395	to to	1521—9642	to to
473—7921	to to	to to	1325—9389	1522—9643	1648—7725
to to	693—8412	1201—9400	1326—9341	1525—9644	1650—7798
478—7926	694—8243	1202—9266	to to	to to	to to
479—7835	to to	1203—9148	1331—9346	1528—9647	1659—7808
480—7848	702—8251	1204—9258	1332—9390	1529—9554	1660—7759
485—7850	704—7961	1205—9232	1333—9303	1530—9555	to to
486—7851	to to	to to	1335—9305	1531—9557	1665—7764
487—7856	710—7967	1221—9248	to to	1532—9428	1666—7726
488—7857	711—8028	1222—9249	1351—9321	1533—9596	1667—7728
489—7858	712—8029	to to	1352—9329	1534—9429	1668—7732
490—7859	to to	1229—9256	1354—9330	1535—9506	1669—7733
491—7843	732—8049	1230—9258	1355—9331	to to	1670—7734
to to	733—8050	1231—9259	1356—9333	1557—9528	1671—7727
495—7847	747—1428	1232—9262	1357—9347	1558—9529	1672—7735
496—7893	748—1437	1233—9267	1358—9348	1559—9434	1673—7736
499—7894	749—1437	to to	1359—9349	to to	1674—7737
502—7895	750—1438	1240—9274	1360—9351	1563—9438	1675—7738
to to	751—1438	1241—9278	1361—9350	1564—9440	1676—7229
510—7902	752—1441	to to	1367—9149	1565—9439	1677—7730
529—7517	753—1442	1255—9292	1376—9134	1566—9441	1678—7731
530—7518	756—8465	1256—9174	1377—9275	1567—9442	1679—7740
to to	to to	1257—9177	1379—9176	1568—9443	1680—7773
544—7534	763—8472	1258—9175	1380—9131-59	1569—9448	1681—7776
545—7535	764—7501	1259—9178	1381—9131-60	1570—9568	1683—7778
547—7968	to to	1260—9179	1382—9202	to to	1684—7779
to to	776—7513	1261—9180	1382a—9206	1576—9574	1685—7774
574—7995	777—8214	to to	1383—9357	1577—9578	1686—7771
577—8285	778—7442	1265—9184	to to	to to	1687—7772
to to	to to	1266—9186	1386—9360	1581—9582	1688—7766
624—8331	791—7455	1267—9187	1387—9225	1582—9597	to to
625—8201	792—8385	1268—9188	to to	to to	1692—7769
to to	793—8278	1269—9151	1392—9230	1585—9600	1693—7753
628—8204	794—7435	1270—9173	1393—8130	1586—9609	to to
629—8213	795—1807	1271—9170	to to	1587—9261	1698—7758
630—8205	796—7842	1272—9171	1401—8139	1588—9601	1699—7780
to to	798—8267	1273—9172	1452—9625	1589—9602	to to
637—8211	799—7369	1274—9152	to to	1590—9185	1706—7787
638—7661	800—7431	1275—9153	1464—9638	1591—9603	1707—7434
to to	801—7372	1275—9154	1465—9417	to to	1708—7437
647—7670	802—7836	1276—9265	1466—9418	1596—9608	1709—7440
648—7646	803—7837	1277—9155	1467—9419	1597—9610	1710—7330
to to	804—7997	to to	1468—9649	1598—9611	1711—7440
658—7657	805—7998	1287—9165	1469—9410	1599—9612	1712—7440
659—8555	814—8094	1289—9167	1470—9439	1600—9613	HPC—PC
to to	to to	1290—9168	1471—9584	1601—9420	142—9131-49
663—8559	821—8101	1291—9169	to to	to to	143—9131-51
				1607—9426	148—9131-48

CROSS REFERENCES BALLINGER'S CODE TO PIERCE'S CODE

BC—PC	BC—PC	BC—PC	BC—PC	BC—PC	BC—PC
1—1500	65—3602	80—3557	108—6651	130—6581	161—6702
to to	66—3603	81—3583	109—6652	to to	162—6703
33—1561	67—3600	to to	115—6678	153—6603	164—6704
36—1488	68—3601	97—3599	116—6679	155—6691	165—6705
to to	69—3604	100—6649	121—6680	156—6697	167—6576
53—1487	70—3605	101—6653	122—6681	157—6698	168—6577
58—3558	72—3575	to to	123—7485	158—6699	169—6578
59—3566	to to	106—6658	124—6682	159—6700	170—6580
63—3571	79—3581	107—6650	124—6688	160—6701	198—6565



## CROSS REFERENCES BALLINGER'S CODE TO PIERCE'S CODE

BC-PC  
210-8660  
211-8661  
212-8663  
213-8673  
214-8672  
215-8662  
217-8671  
218-8578  
219-8579  
220-8677  
to to  
225-8682  
235-8608  
236-8626  
237-8627  
238-8636  
239-8637  
240-8576  
245-4269  
to to  
254-4278  
260-1418  
261-1419  
265-1468  
to to  
274-1477  
280-1847  
to to  
288-1854a  
305-1710  
to to  
311-1717  
312-1720  
313-1721  
314-1722  
320-1656  
321-1686  
to to  
326-1692  
328-1657  
329-1658  
330-1684  
331-1659  
332-1661  
333-1681  
334-1666  
335-1660  
340-1685  
341-1662  
342-1664  
343-1667  
344-1677  
345-1675  
346-1678  
347-1671  
348-1674  
349-1704  
350-1705  
351-1706  
352-1707  
353-1663  
354-1668  
355-1676  
356-1665  
357-1708  
358-1709  
359-1679  
370-1844  
371-1845  
372-1846  
375-1693  
to to  
385-1703  
390-1621  
to to

BC-PC  
393-1624  
394-1842  
395-1626  
396-1627  
397-6604  
398-1628  
to to  
402-1632  
402a-1843  
403-1633  
to to  
409-1638  
410-1639  
to to  
422-1651  
425-1817  
426-1818  
427-1822  
428-1821  
429-1823  
430-1824  
431-1831  
432-1834  
433-1825  
434-1827  
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436-1826  
437-5471  
438-5472  
439-1828  
440-1830  
441-1833  
442-1829  
443-1832  
464a-1781  
465-1787  
to to  
469-1791  
470-1793  
471-1794  
472-1795  
473-2155  
474-1792  
480-1619  
481-6937  
482-6938  
490-1763  
492-1769  
493-1770  
494-1771  
to to  
498-1775  
499-1776  
505-1796  
506-1802  
to to  
509-1805  
510-1797  
511-1798  
512-1799  
513-1800  
514-7842  
515-1806  
516-1801  
517-1467  
518-1815  
519-1816  
525-1733  
525a-1737  
526-1738  
to to  
543-1755  
547-1462  
to to  
552-1467

BC-PC  
557-9449  
558-9450  
559-9451  
559-9484  
560-9452  
to to  
565-9457  
566-9459  
567-9460  
568-9461  
569-9447  
574-1566  
571-1616  
580-7100-1  
to to  
695-7100-117  
700-637  
to to  
704-641  
705-1348  
706-643  
to to  
708-646  
709-647  
714-648  
to to  
729-659  
734-673  
to to  
767-693  
835-1242  
836-1243  
837-1244  
915-778a  
917-781  
919-772  
995-825  
to to  
1039-855  
1047-1196  
to to  
1050-1999  
1054-921  
to to  
1071-938  
1076-1214  
1077-1215  
1080-1227  
to to  
1083-1230  
1107-883  
to to  
1112-888  
1190-5440  
to to  
1206-5456  
1207-5476  
1208-5477  
1214-5485  
to to  
1217-5488  
1222-5478  
1223-5479  
1224-5480  
1237-5330  
to to  
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1260-1176  
to to  
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1267-1268  
1268-1183  
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BC-PC  
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to to  
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to to  
1286-1276  
1292-7544  
1293-666  
to to  
1298-671  
1299-8374  
1300-672  
1320-2078  
1321-2079  
1322-2081  
1323-2080  
1324-2082  
1328-4500  
to to  
1331-4503  
1332-2083  
1333-2084  
1334-2088  
1335-2086  
1336-2201  
to to  
1343-2208  
1344-2156  
1348-2098  
1349-2158  
to to  
1359-2167  
1360-2167a  
1361-2099  
1362-2100  
to to  
1381-2119  
1385-2209  
to to  
1396-2221  
1400-2168  
to to  
1417-2188  
1425-2121  
to to  
1441-2139  
1445-2323  
1446-2344  
to to  
1449-2347  
1450-2324  
to to  
1464-2343  
1465-2261  
to to  
1489-2285  
1495-2886  
to to  
1513-2304  
1517-508  
to to  
1533-524  
1547-2348  
1548-2349  
1549-2351  
1550-6569  
1551-6570  
1552-8649  
1553-8650  
1554-8588  
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1556-8675  
1557-8676

BC-PC  
1558-8641  
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1564-1571  
to to  
160S-1618  
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1609a-7499a  
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1610-7479  
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1613-7492  
1614-7493  
1615-7494  
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1617-9131-87  
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1619-7490  
1620-7496  
1621-1612  
1622-7497  
1623-7498  
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1625-9209  
1627-9203  
to to  
1631-9207  
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1637-9432  
1641-9485  
to to  
1649-9493  
1655-6883  
to to  
1662-6898  
1663-6905  
1664-6898  
to to  
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1674-6910  
to to  
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1696-6933  
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1703-6939  
to to  
1712-6949  
1713-6950  
1714-7014  
1715-7019  
1716-7020  
1717-7021  
1718-7022  
1719-7023  
1720-7029  
1721-7029a  
1722-7030  
1723-6953  
1724-6954  
to to  
1727-6957  
1728-6966  
to to

BC-PC  
1746-6989  
1747-6951  
1748-6952  
1749-6990  
to to  
1772-7007  
1773-7011  
1778-7031  
to to  
1787-7040  
1790-956  
to to  
1801-967  
1810-7041  
to to  
1819-7050  
1825-6700  
to to  
1828-6709  
1830-6316  
to to  
1835-6321  
1840-6571  
to to  
1843-6574  
1845-5405  
to to  
1865-5421  
1870-5465  
to to  
1875-5470  
1890-5457  
1891-5460  
to to  
1895-5464  
1898-5429  
to to  
1908-5439  
1910-6618  
1911-6619  
1912-6621  
1913-6620  
2068-3765-147  
2069-3675-147  
2075-3765-148  
2076-3765-149  
2077-3765-150  
2078-3765-151  
2085-6459  
2110-7110  
2111-7111  
2112-7116  
to to  
2116-7120  
2117-7112  
2118-6539  
to to  
2122-6543  
2123-6440  
to to  
2126-6443  
2130-6335  
2131-6337  
2132-6338  
to to  
2140-6348  
2141-6349  
2142-6355  
2143-6365  
2144-6366  
2145-6368  
to to  
2148-6371  
2149-6373  
2150-6375

BC—PC	BC—PC	BC—PC	BC—PC	BC—PC	BC—PC
to to	2711—6732	3087—9131-70	3489—9131-32	3971—6125	4350—7644
2156—6382	2713—6733	to to	3490—2028	4014—6178	4355—4711
2157—6383	to to	3095—9131-77	to to	to to	4356—7696
2158—6384	2719—6738a	3096—9131-79	3493—2031	4023—6187	4357—4713
2159—6385	2721—6761	to to	3510—7283	4048—2388	4358—4714
2160—6387	to to	3100—9131-84	to to	to to	4359—7697
2161—6390	2727—6767	3103—3669	3515—7288	4063—2403	4360—4712
2162—6392	2733—4363	to to	3520—2370	4067—6513	4361—7796
to to	2735—4364	3124—3688	to to	to to	4362—7788
2176—6411	2736—4365	3128—3696	3537—2387	4074—6520	to to
2177—6412	2737—4369	to to	3538—5989	4075—7268	4368—7797
to to	2738—4370	3134—3702	3539—5990	to to	4369—4715
2193—6432	2739—4371	3136—3689	3540—5991	4078—7271	to to
2195—6433	2740—4372	3137—3690	3585—193	4080—6523	4374—4719
to to	2744—4373	3138—9131-41	3586—194	to to	4378—4552
2200—6438	to to	3139—9131-43	3587—195	4089—6532	to to
2203—6521	2758—4387	3139a—9131-44	3610—4346	4090—7266	4386—4560
2204—6522	2759—4410	3151—3771	to to	4091—7710	to to
2212—6486	2761—4398	to to	3619—4355	to to	4394—4564d
to to	2765—4400	3157—3777	2621—7101	4099—7718	4438—4613
2218—6493	2766—4401	3183—3825	to to	4100—3275	to to
2235—6503-13	2769—4389	3183a—3827	3629—7109	to to	4456—4630
to to	2772—4392	3186—3809	3630—9131-3	4118—3293	4460—4689
2241—6503-22	2773—4390	to to	3631—9131-4	to to	4461—4690
2242—6503-7	2774—4411	3194—3817	3632—9131-5	4165—3347	4462—4691
2243—6503-8	2775—4412	3195—3792	3646—9131-9	4166—3197	4467—3707
2244—6273	2776—4412	to to	3648—7267	to to	4468—9131-64
2252—6274	2777—4388	3211—3808	3673—1946-1	4244—3274	4469—3709
2474—4780	2778—9336	3244—4471-5	to to	4245—3354	4470—3715
2479—4781	2779—9337	to to	3714—1946-56	to to	4471—3710
2482—4782	2780—9338	3258—4471-19	3715—1947-1	4249—3358	4472—3711
2484—4775a	2781—9339	3285—483	to to	4250—4504	4473—3712
2488—3196	2783—3418	to to	3754—1947-40	4251—4505	4474—3713
2489—3196-1	2784—9192	3290—488	3755—1947-78	4252—4514	4475—3714
2501—6537	2785—3419	3305—3548	to to	4253—4515	4476—3716
2502—6538	2786—9234	3306—3549	3762—1947-85	4254—4540	4477—3708
2631—6239	2787—9235	3307—3550	3763—6060	4255—4516	4478—3717
2634—6244	2788—3405	3308—6866	3764—6060a	to to	to to
2635—6245	to to	to to	3765—6060b	4258—4519	4483—3722
2636—6254	2800—3417	3311—6869	3767—5975	4259—4506	4488—1432
2637—6255	2866—3625	3312—3464	3768—5973	4260—4507	4489—1424
2640—6246	2910—3766	3313—3465	3769—5974	4261—4520	4490—1433
to to	to to	3316—6863	3770—5976	to to	4491—1434
2646—6253	2914—3770	3317—6864	3773—6003	4266—4525	4492—1440
2651—2814	2945—3196-1	3318—6865	3781—6010	4267—4541	4493—1428
2652—2815	2946—3196-2	3322—7289	to to	4268—4526	4494—1437
2653—2818	2947—3196-3	3380—6298	3786—6015	to to	4495—1438
2654—2819	2953—636t	to to	3788—6037a	4271—4529	4496—1441
2655—2821	2954—636u	3390—6306	to to	to to	4497—1442
2657—2822	2955—636v	3392—83	3806—6050	4280—4539	4502—1420
2658—2823	2956—5277	3393—84	3834—525	4281—7719	4503—1422
2659—2841	to to	3416—2016	to to	4281a—7645	4504—1430
2660—2827	2969—5292	to to	3842—533	4282—7623	4505—1425
2661—2828	2972—5336	3423—2023	3843—535	4283—7624	4506—1426
2662—2830	to to	3424—3637	3844—536	4284—7625	4507—1429
2663—2829	3009—5373	to to	3845—537	4291—4657	4508—1431
2664—2831	3021—1931	3436—3649	3846—6016	4292—4658	4509—1423
2665—2832	to to	3437—3703	3847—6017	4293—4659	4511—580
2666—2834	3033—1944	to to	3848—6029	4294—4662	4512—581
2667—2835	3052—2038	3441—3706	to to	4295—4663	4517—1909
2668—2836	3053—2039	3442—9729	3854—6036	to to	4518—1910
2669—2839	4054—2041	to to	3855—6212	4299—4667	4519—1924
2670—2840	3055—3650	3446—9733	to to	4303—5665	4520—1925
2671—2842	to to	3466—1975	3870—6227	to to	4521—1926
2672—2845	3073—3668	to to	3871—6188	4306—5668	4522—1927
2675—2843	3076—4268	3474—1983	to to	4307—5670	4523—1912
2676—2844	3077—576	3475—1953	3884—6201	4308—5703	4524—1913
2677—2837	3078—577	3476—2072	3887—5960	4309—5704	4525—1911
2678—2838	3079—578	to to	3888—5961	4310—5705	4526—1915
2683—2833	3080—3749	3481—2077	3889—5962	4311—5709	to to
2693—2824	to to	3482—2050a	3891—858	4312—5710	4532—1921
2694—2826	3083—3752	3483—2050b	to to	4333—7626	4533—1928
2695—2846	3084—9131-69	3484—2050c	3915—882	4334—7627	4534—1922
2696—2825	3085—9131-78	3487—9131-33	3916—6082	4335—7628	4535—1914
2706—6731	3086—9131-68	3488—9131-34	to to	to to	4536—1923



BC—PC	BC—PC	BC—PC	BC—PC	BC—PC	BC—PC
4537—7920	4704—8628	to to	to to	to to	5705—8465
4538—1929	4709—2699	4883—8450	5125—8093b	5415—8025	to to
4538a—1930	4710—2703	4884—7648	5126—8085	5418—8421	5712—8472
4539—1443	4711—2702	4885—8463	5127—8086	to to	5716—7501
to to	4712—2700	4886—8451	5131—8087	5428—8431	to to
4547—1451	4713—2701	4886a—8481	5132—8111	5431—8052	5724—7509
4548—135	4714—8573	4887—8452	5133—8116	to to	5725—7514
4549—136	4715—8640	to to	5133a—8120	5452—8073	5726—7515
4550—137	4716—8574	4897—8462	5134—8088	5455—8413	5727—7516
4551—2748	4717—8575	4898—7794	5135—8089	5456—8414	5728—7510
4552—2749	4718—1653	4903—8342	5136—8112	5457—8415	to to
4557—9746	4719—1654	to to	5137—8113	5458—8419	5731—7513
4558—9747	4720—1655	4920—8367	5138—8114	5459—8420	5733—8214
4559—9748	4721—8583	4925—8383	5139—8115	5460—8416	5738—7415
4560—9773	4721—8584	4926—8384	5140—8117	5461—8417	to to
4563—9744	4722—8580	4927—8385	5141—8118	5462—8418	5751—7428
4564—9745	4723—8582	4930—8368	5143—8121	5463—7350	5754—8186
4565—9742	4724—8585	to to	5148—8163	to to	to to
4566—9743	4725—8586	4939—8378	5149—8164	5489—7378	5767—8200
4568—3552	4726—8587	4940—8267	5150—8165	5490—7369	5769—8386
to to	4727—8531	4941—8379	5153—8130	5491—7372	to to
4571—3556	4730—8140	to to	to to	5492—7431	5776—8393
4575—7744	to to	4944—8382	5162—8139	5493—8215	5780—8398
to to	4734—8144	4949—8332	5165—7456	to to	to to
4578—7747	4736—8145	to to	5166—192	5499—8223	5794—8412
4580—1421	4547—8147	4958—8341	5167—7457	5500—7517	5798—7442
4581—582	4746—8148	4962—8473	to to	5501—7536	to to
4582—583	4747—8149	to to	5186—7476	to to	5811—7455
4583—584	4748—8150	4968—8479	5192—7827	5506—7541	5814—8028
4585—9767	4753—6579	4970—8480	5193—7830	5507—7518	5815—8050
to to	4754—1780	4971—8482	5194—7829	to to	5816—8029
4589—9770	4755—1783	4972—8483	5195—7831	5521—7534	to to
4620—9847	4756—1785	4977—8485	5196—7828	5525—7968	5836—8049
4621—9848	4757—1786	4978—8489	5197—7832	to to	5841—2854
4622—9849	4767—180	to to	to to	5552—7995	to to
4623—3426	4768—181	5010—8521	5200—7835	5557—8285	5855—2863
4624—9850	4769—182	5011—8524	5201—7841	to to	5856—1814
to to	4770—183	5012—8525	5202—7838	5604—8331	5757—2869
4634—9860	4771—184	5013—8522	5203—7839	5608—6260	5858—2870
4638—9861	4772—185	5014—8523	5204—7921	to to	5870—9751
to to	4773—186	5019—8526	to to	5612—6264	to to
4645—9868	4774—187	to to	5209—7926	5616—7661	5877—9758
4650—8666	4778—191	5023—8530	5214—7860	to to	5878—9749
4651—8669	4783—8252	5029—8486	to to	5625—7676	5879—8210
4652—8664	4784—7434	5030—8487	5246—7892	5629—7609	5880—8211
4653—8667	4785—7437	5033—8532	5247—7850	to to	5881—9750
4654—8665	4786—7440	to to	5248—7851	5633—7613	5885—8201
4656—8670	4787—7330	5041—8540	5248b—7853	5637—7646	to to
4657—8674	4788—7440	5045—8127	5249—7856	to to	5888—8204
4658—8668	4789—7440	5046—8128	5250—7857	5647—7657	5889—8213
4663—8628	4790—7435	5047—8129	5251—7854	5648—7614	5890—8205
4664—8629	4793—8253	5050—7809	5252—7855	5649—7615	5891—8212
4665—8630	4794—8254	to to	5253—7848	5650—7616	5893—8206
4666—8631	4796—8160	5066—7826	5254—7858	5654—8555	5894—8207
4667—8645	4797—8161	5070—8224	5255—7859	to to	5895—8208
to to	4798—8162	to to	5262—7843	5658—8559	5896—8209
4670—8648	4799—7542	5076—8230	to to	5659—7535	5900—9705
4671—8632	4800—8166	5080—8078	5266—7847	5660—8231	to to
4672—1807	to to	5080a—8077	5269—7893	to to	5918—9724
4673—8635	4818—8185	5081—8079	5270—7836	5663—8234	5919—9737
4674—8638	4824—8255	5085—8122	5271—7837	5667—7412	to to
4675—8634	to to	5086—8123	5272—7894	5668—7413	5922—9740
4676—8633	4842—8279	5087—8124	5286—7895	5669—7414	5925—9724
4680—9563	4843—8282	5090—8109	to to	5673—8393	to to
4681—9564	4844—8283	5091—8110	5294—7902	to to	5927—9727
4682—9565	4845—8284	5093—8102	5300—8094	5677—8397	5930—9679
4683—9433	4846—8280	to to	to to	5678—8074	to to
4684—9458	4847—8281	5099—8108	5307—8101	5679—8075	5949—9698
4685—9561	4852—8541	5102—7339	5312—7927	5680—8076	5953—9699
4686—9562	to to	to to	to to	5684—8243	5954—9703
4690—8560	4857—8545	5112—7349	5345—7960	to to	5957—9666
4691—8561	4858—8548	5115—8081	5350—7379	5692—8251	5958—9667
4695—8564	to to	to to	to to	5695—7961	5959—9668
to to	4864—8554	5119—8084	5382—7411	to to	5963—9655
4703—8572	4869—8432	5120—8090	5390—7999	5701—7967	to to

## CROSS REFERENCES PIERCE'S CODE 1905 TO PIERCE'E CODE

2840-19

BC-PC	BC-PC	BC-PC	BC-PC	BC-PC	BC-PC
5968-9660	6046-7774	6632-9555	6725-9131-121	6861-9292	6944-9275
5971-9651	6047-7771	6633-9557	6726-9131-122	6865-9174	6946-9374
5972-9654	6048-7772	6634-9428	6740-9494	6867-9177	6947-9375
5975-9675	6054-7753	6635-9596	to to	6868-9175	to to
5976-9676	to to	6636-9429	6751-9505	6869-7793	6961-9389
5977-2811	6059-7758	6637-9566	6754-9401	6870-9176	6965-9341
5981-9734	6063-7780	6640-9506	to to	6871-9178	to to
5982-9735	to to	to to	6762-9409	6872-9179	6970-9346
5983-9736	6070-7787	6662-9528	6763-9444	6873-9180	6975-9390
5984-9665	6480-9813	6664-9529	6764-9445	to to	6976-9303
5985-9665a	to to	6666-9434	6765-9446	6877-9184	6977-9305
5986-9665b	6483-9816	6667-9435	6766-9575	6878-9186	to to
5990-7721	6487-9870	6668-9436	6767-9576	6879-9187	6993-9321
to to	to to	6669-9437	6768-9577	6880-9188	6994-9329
5993-7725	6494-9877	6670-9438	6780-9340	6884-9151	6996-9330
5995-7798	6500-7290	6671-9440	6782-9132	6885-9173	6997-9333
to to	to to	6672-9439	6783-9133	6886-9170	6998-9331
6004-7808	6537-7338	6673-9441	6784-9134	6887-9171	7004-9347
6008-7759	6542-9625	6674-9442	6785-9393	6888-9172	7005-9348
to to	to to	6675-9443	6786-9276	6889-9152	7006-9349
6013-7764	6554-9638	6678-9448	6788-9394	6890-9153	7007-9351
6017-7726	6555-9417	6680-9567	6789-9391	6891-9154	7008-9350
6018-7728	6556-9418	to to	6790-9392	6892-9265	7009-9202
6019-7732	6557-9419	6687-9574	6791-9395	6893-9155	7010-9357
6020-7733	6558-9649	6688-9578	to to	to to	to to
6021-7734	6559-9650	to to	6797-9400	6903-9165	7013-9360
6022-7727	6560-9410	6692-9582	6800-9266	6905-9167	7015-9225
6023-7735	6561-9439	6695-9597	6801-9148	6906-7168	to to
6024-7736	6565-9584	to to	6802-9258	6907-9169	7020-9230
6025-7737	to to	6698-9600	6805-9232	6909-9149	7022-9352
6026-7738	6576-9595	6699-9609	to to	6917-9189	to to
6027-7729	6580-9410	6700-9601	6821-9248	6918-9190	7026-9356
6028-7730	to to	6701-9602	6824-9249	6919-9191	7262-9131-49
6029-7731	6585-9415	6702-9185	to to	6920-9131-59	7263-9131-51
6030-7740	6588-9614	6703-9603	6831-9256	6921-9131-60	7267-9131-48
6034-7766	to to	to to	6832-9258	6929-9361	7415-9131-20
to to	6598-9624	6708-9608	6833-9259	6930-9362	7416-9131-22
6038-7769	6619-9427	6709-9610	6834-9261	6931-9365	7417-9131-27
6040-7773	6620-9556	6710-9611	6835-9262	to to	7418-9131-21
6041-7997	6621-9640	6711-9612	6839-9267	6939-9373	7419-9131-23
6042-7998	6622-9641	6712-9613	to to	6940-9216	7420-9131-25
6043-7776	to to	6715-9420	6846-9274	6941-9214	7428-2199
6044-7778	6628-9647	to to	6847-9278	6942-9217	7429-2200
6045-7779	6631-9554	6721-9426	to to	6943-9218	

## CROSS REFERENCES PIERCE'S CODE 1905 TO PIERCE'S CODE

PC'05-PC	PC'05-PC	PC'05-PC	PC'05-PC	PC'05-PC	PC'05-PC
249-8252	400-8368	581-8420	706-8224	799-8125	to to
to to	to to	582-8282	to to	800-8126	930-7960
273-8281	414-8382	583-8283	712-8230	806-7827	936-7721
279-8160	420-8332	584-8284	718-8077	to to	to to
to to	to to	590-8484	to to	814-7835	940-7725
302-8185	429-8341	591-8485	721-8080	815-7838	941-7753
308-8541	435-7350	592-8489	727-8122	to to	to to
to to	to to	to to	728-8123	818-7842	946-7758
320-8554	461-7378	628-8525	729-8124	824-7921	952-7798
326-8432	467-8421	634-8526	735-8109	to to	to to
to to	to to	to to	736-8110	829-7926	962-7808
353-8262	477-7337	638-8530	742-8102	835-7848	968-7759
354-8473	483-8052	645-8486	to to	836-7849	to to
to to	to to	646-8487	748-8108	840-7850	973-7764
364-8483	504-8076	652-8531	754-8127	to to	979-7726
370-8342	510-7379	to to	755-8128	848-7858	to to
to to	to to	661-8540	756-8129	854-7843	996-7743
380-8352	542-7411	667-7809	762-8081	to to	1011-7771
381-8361	543-7999	to to	to to	858-7847	to to
to to	to to	684-7826	777-8093b	864-7893	1027-7787
387-8367	568-8027	690-7339	783-8111	to to	1033-8130
393-8383	574-8413	to to	to to	891-7920	to to
394-8384	to to	700-7349	793-8121	897-7927	1042-8139



# CROSS REFERENCES PIERCE'S CODE 1905 TO PIERCE'S CODE

2840-20

PC'05—PC	PC'05—PC	PC'05—PC	PC'05—PC	PC'05—PC	PC'05—PC
1048—7290	1498—7369	2040—9231	2891—9625	3279—524	3816a—647
1048—7290	1499—7431	2046—9232	2891—9625	3285—7412	3816b—700
to to	1500—7372	to to	to to	3286—7413	3816g—829
1061—7305	1501—7836	2062—9248	2904—9639	3287—7414	3816n—857
1062—7315	1502—7837	2069—9249	2921—9410	3293—525	3816o—846
to to	1503—8463	to to	to to	to to	3816p—1281
1085—7338	1509—7429	2076—9256	2930—9419	3305—537	3816r—1282
1091—8353	1510—7430	2077—9258	2936—9584	3323—565	3816s—1187
to to	1511—7433	to to	to to	to to	to to
1098—8360	to to	2085—9265	2948—9595	3337a—579	3817f—1195
1103—7456	1518—7441	2091—9266	2949—9427	3342—580	3817g—1117
to to	1519—8174	to to	2955—9640	to to	3817h—1118
1123—7476	1519a—8442	2114—9292	to to	3353—592	3818b—1062
1129—8094	to to	2120—9174	2962—9647	3363—636t	to to
to to	1519d—8445	to to	2968—9554	to to	3818e—1065
1136—8101	1519e—7384	2135—9192	to to	3367—636x	3818i—856
1142—7517	1519f—8005	2136—9213	2971—9557	3373—637	to to
to to	1519g—8006	2142—9151	2972—9428	to to	3818h—978
1167—7543	1519h—8488	to to	2973—9429	3394—659	3818i—856
1168—7968	1519i—7770	2164—9173	2979—9506	3395—673	3818k—694
to to	1519k—1652	2165—9214	to to	3511—825	3818l—695
1196—7996	1519l—7463	to to	3001—9528	3514—828	3818m—696
1202—8285	1519m—7523	2169—9218	3006—9614	3516—830	3822—1351
to to	1519n—7524	2175—9397	to to	to to	to to
1249—8331	1519o—7525	to to	3016—9624	3542—855	3828—1357
1256—8555	1524—9148	2178—9400	3022—9420	3543—1261	3863—1420
to to	1529—9149	2184—9361	to to	to to	to to
1259—8559	1538—9340	to to	3028—9426	3546—1264	3894—1451
1265—8231	1743—9131-19	2211—9390	3034—9401	3547—1196	3899—1462
to to	to to	2217—9341	to to	to to	to to
1268—8242	1752—1931-28	to to	3042—9409	3550—1199	3905—1467a
1274—8201	1859—9131-68	2222—9346	3043—9566	3551—1172	3911—1468
to to	to to	2228—9303	3049—9494	to to	to to
1286—8213	1876—1931-84	to to	to to	3565—1186	3920—1477
1308—8214	1890—9131-121	2259—9335	3060—9505	3566—1265	3931—1488
1314—8215	1891—9131-122	2265—9347	3061—9650	to to	to to
to to	1904—9131-9	to to	3067—9529	3580—1280	3938—1495
1322—8223	1905—9131-10	2268—9350	3071—9433	3581—1288	3944—1500
1328—8465	1907—9131-56	2282—9192	to to	3582—956	to to
to to	1908—9131-57	2283—9351	3086—9448	to to	3997—1561
1335—8472	1909—9131-29	2284—9202	3092—9567	3593—967	4003—1566a
1341—8243	1910—9131-30	2285—9185	to to	3638—1145	4004—1567
to to	1911—9131-31	2286—9176	3108—9583	to to	4006—1571
1349—8251	1926—7788	2287—9150	3114—9597	3642—1149	4036—1602
1355—8393	to to	2288—9336	to to	3650—1254	to to
to to	1935—7797	to to	3130—9613	to to	4050—1618
1359—8397	1936—9131-3	2291—9339	3131—9649	3654—1258	4056—1619
1365—8028	1937—9131-4	2292—9203	3138—9431	3655—1239	4057—1621
to to	1938—9131-5	to to	3139—9432	3656—1240	to to
1387—8051	1939—9131-32	2301—9212	3143—1	3657—1241	4086—1652
1393—7415	1940—9131-33	2302—9352	to to	3674—666	4087—1653
to to	1941—9131-34	to to	3143c—4	to to	4088—1654
1406—7428	1956—9131-98	2306—9356	3155—83	3679—671	4089—1655
1407—8186	1957—9131-99	2307—9193	3156—84	3681—672	4090—1656
to to	1958—9131-100	to to	3162—135	3688—883	to to
1421—8200	1961—5206	2312—9198	3163—136	to to	4120—1684
1422—8386	1962—5207	2702—9847	3164—137	3693—888	4123—1686
to to	1963—5208	to to	3170—147	3694—1342	to to
1428—8392	1972—9131-85	2723—9868	to to	3695—1343	4129—1692
1434—8398	1976—9131-86	2801—9813	3173—152	3696—1344	4130—1710
to to	1977—9131-87	to to	3180—177	3697—1348	to to
1448—8412	1981—9131-1	2804—9816	to to	3698—1349	4147—1729
1454—7961	1982—9131-2	2810—9869	3201—192	3699—921	4148—1708
to to	1985—9131-12	to to	3207—193	to to	4149—1709
1461—7967	to to	2818—9876a	3208—194	3716—938	4150—1704
1467—7442	1994—9131-18	2824—9843	3209—195	3728—674	to to
to to	1995—9131-96	to to	3212—241	to to	4153—1707
1480—7455	2001—9132	2827—9846	to to	3735—681	4154—1693
1486—7997	to to	2832a—9471	3212i—250	3736—688	to to
1487—7998	2004—9135	to to	3215—413	to to	4161c—1703
1493—8385	2025—9357	2853—9483	to to	3741—693	4162—1733
1494—7435	to to	2860—9449	3229—427	3742—1268	to to
1495—7842	2028—9360	to to	3235—483	3792—858	4181—1755
1496—7432	2034—9225	2872—9461	to to	to to	4183—1780
1497—8267	to to	2878—9558	3244—492	3816—882	to to
		to to	3250—493		4195—1795

PC'05—PC	PC'05—PC	PC'05—PC	PC'05—PC	PC'05—PC	PC'05—PC
4196—1796	4617—1947-78	5112—7657	5578—2747	6062h—3615	6547—9767
to to	to to	5114—7673	5579—2748	6063—3625	6548—9768
4210—1816	4624—1947-85	to to	5580—2749	to to	6549—9759
4213—1769	4624e—1947-86	5121—7680	5586—2811	6071—3634	to to
to to	4624f—1947-87	5122—7701	5587—2812	6077—9699	6556—9766
4223—1779	4624g—1947-45	to to	5587a—2813	to to	6557—9742
4224—1817	to to	5141—7720	5593—2854	6081—9703	to to
to to	4624p—1947-53	5142—7648	to to	6082—9679	6560—9745
4239—1834	4630—7501	5144—7623	5609—2870	to to	6561—9771
4240—1841	to to	5145—7624	5655—3148	6101—9698	6562—9772
4241—1842	4645—7516	5146—7625	to to	6102—9705	6563—9773
4242—1843	4658—1957	5147—7614	5662—3154	to to	6569—4072
4268a—1734	to to	5148—7615	5700—3155	6123—9727	to to
4268b—1735	4675—1974	5149—7616	to to	6124—9734	6764—4267
4268c—1736	4676—1987	5150—7620	5707—3162	6125—9735	6793—4268
4268d—1784	to to	5151—7621	5726—3196	6126—9736	6798—4269
4268e—1819	4680k—2001	5152—7622	to to	6127—9666	to to
4268f—1820	4685—2072	5153—7696	5730—3196-4	6128—9667	6807—4278
4269—1844	to to	5154—7697	5736—3197	6129—9668	6810—6503
4270—1845	4690—2077	5155—7698	to to	6130—9665	to to
4271—1846	4691—1953	5156—7699	5777—3237	6131—9667	6810c—6503-2a
4277—1847	4692—2016	5157—7700	5782—3245	6132—9668	6834—6503-7
to to	to to	5165—7488	to to	6134—9737	to to
4285—1854a	4699—2023	to to	5814—3274	to to	6845—6503-22
4291—8560	4700—1975	5179—7500	5815—3275	6137—9741	6846—6503-23
to to	to to	5185—2370	to to	6138—9655	6856—6503-24
4305—8576	4708—1983	to to	5880—3347	to to	to to
4308—8649	4728—2028	5202—2387	5881—3354	6143—9660	6866—6503-34
4309—8650	to to	5208—2388	to to	6144—9675	6882—4346
4311—8578	4731—2031	to to	5898—3371	6145—9676	to to
to to	4761c—2024	5223—2403	5899—3372	6148—9729	6891—4355
4322—8589	to to	5337—2556	to to	to to	6897—4361
4323—8660	4761f—2027	5342—7744	5904n—3398	6152—9733	6898—4362
to to	4761g—2014	5342—7744	5904r—3398	6152a—9704	6904—4363
4346—8681	4761h—2015	5350—7751a	to to	6152b—9661	to to
4348—8683	4768—2079	5356—2641	5922—3419	to to	6934—4393
to to	to to	to to	5928—3426	6152f—9664a	6934a—4415
4352—8687	4780—2086	5356r—2641-11	5934—8140	6158—3637	to to
4355—8613	4786—2348	5358—2641-21	to to	to to	6934d—4418
4360—8626	to to	to to	5944—8150	6170—3649	6934e—4366
to to	4789—2351	5358f—2641-27	5970—3433	6176—3650	6934f—4367
4372—8638	4795—2201	5364—2641-29	to to	to to	6934g—4368
4373—8639	to to	to to	5978—3442	6194—3668	6935—4394
to to	4818—2221	5371—2641-32	5978a—3427	6200—3669	6936—4395
4382—8648	4824—2168	5378—2641-33	to to	to to	6937—4396
4402—1859	to to	to to	5978f—3432	6246—3702	6938—4397
4406—1861	4842—2188	5383—2641-37	5978g—3461	6252—3703	6939—4398
4407—1862	1847—2121	5385—2641-42	5978h—3462	to to	6940—4399
4409—1863	to to	5387—2641-43	5978i—3463	6255—3706	6943—4400
4418—1865	4882—2156	5387—2641-39	5979—3459	6261—3707	6944—4401
4423—1870	4889—2322	5387a—2641-40	5980—3460	to to	6945—4410
4424—1871	to to	5387b—2641-41	5981—3460a	6276—3722	6946—4411
4426—1873	4908—2347	5440—2697	5981a—3517	6292—3749	6947—4412
4427—1881	4930—2098	5441—2698	to to	to to	6954—4450
4428—1882	4943—2099	5447—2699	5981m—3525	6295—3752	to to
4429—1883	to to	to to	5982—3548	6424—3765-148	6970—4466
4435—1909	4963—2119	5451—2703	5983—3549	to to	7004—4471-5
to to	4964—2209	5456—7860	5984—3550	6427—3765-151	to to
4457—1930	4970—2261	to to	5985—3464	6428—3766	7018—4471-19
4463—1931	to to	5488—7892	5986—3465	to to	7044—4500
to to	5013—2304	5519—2746-4	5990—3457	6431a—3770	to to
4476—1944	5019—2199	to to	5991—3458	6432—3771	7047—4503
4482—1946-1	5020—2200	5522—2746-7	5992—3445	to to	7053—4504
to to	5021—2190	5526—2741	5998—3553	6487—3824	to to
4523—1946-57	to to	to to	to to	6522—3825	7082—4539
4524b—1946-63	5029—2197	5530—2745	6001—3556	6523—3826	7083—4613
to to	5035—7661	5536—2814	6007—3557	6524—3827	to to
4524t—1946-79	to to	5537—2815	to to	6530—9746	7087—4617
4530—1947-1	5044—7670	5538—2818	6047—3609	to to	7087a—4685
to to	5045—7609	to to	6060—3622	6542—9758	to to
4569—1947-40	to to	5571—2846	6061—3623	6543—9769	7087d—4688
4606—1947-67	5049—7613	5572b—2847	6062—3624	6544—9770	7088—7626
to to	5102—7646	to to	6062c—3610	6545—9774	to to
4616—1947-77	to to	5572e—2850	to to	6546—9775	7107—7645



# CROSS REFERENCES PIERCE'S CODE 1905 TO PIERCE'S CODE

2840-22

PC'05—PC	PC'05—PC	PC'05—PC	PC'05—PC	PC'05—PC	PC'05—PC
7108—4540	7551—5330	to to	to to	8339f—6669	to to
7109—4541	to to	7843—6043	8125—6306	8339h—6416	8634—6935
7110—4618	7556—5335	7844—6061	8131—6316	8339i—6417	8635—6936
7111—4552	7572—5336	to to	to to	8339k—6418	to to
to to	to to	7850—6065b	8136—6321	8345—6544	8649—6950
7127—4564d	7614—5378	7851—6044	8142—6322	to to	8650—7014
7127a—4692	7620—5405	to to	to to	8353—6555c	to to
to to	to to	7857—6050	8147—6327	8368—6565	8658—7030
7127d—4695	7636—5421	7860—6016	8149—6328	8369—6569	8659—6953
7167—4711	7637—5429	7861—6017	to to	to to	to to
to to	to to	7862—6029	8149c—6331	8375—6574	8686—6989
7176—4719	7664—5456	to to	8153—6440	8376—6575	8687—6951
7177—4619	7680—5457	7869—6036	to to	to to	8688—6952
to to	to to	7870—5973	8156—6443	8381—6580	8689—6990
7188—4630	7691—5470	7873—5975	8159—6335	8387—6581	to to
7189—4668	7692—5476	7874—5976	to to	to to	8712—7013
to to	to to	7909—5968	8171—6349	8410—6604	8713—7031
7205—4684	7696—5480	to to	8172—6355	8411—6618	to to
7206—4689	7701—5485	7912a—5972	to to	to to	8732—7050
7207—4690	to to	7913—6018	8197—6397	8414—6621	8733—8074
7208—4691	7704—5488	7913a—6019	8198—6398	8421—6623	8734—8075
7214—4657	7706—5471	7914—5985	to to	to to	8735—8076
to to	7707—5472	to to	8210—6419	8434—6637	8742—7051
7223—4667	7747—5511	7914c—5988	8211—6447	8441—6649	to to
7224—4635	7748—5512	7918—6020	to to	to to	8758—7067
to to	7755—5513	7919—6021	8222—6458	8450—6658	8759a—6892
7224f—4640	to to	7920—6027	8223—6420	8456—6678	8759b—6895
7224h—6023	7769—5525	7921—6028	to to	to to	8759h—7010
7224i—6024	7779—5703	7922—5960	8238—6438	8466—6683	8760—6875
7224k—6025	7780—5704	7923—5961	8239—6513	8473—6684	to to
7502—5231	7781—5705	7924—5962	to to	to to	8760d—6881
to to	7801—5665	7926—5989	8246—6520	8479—6690	8765—7100-1
7503k—5246	to to	7927—5990	8247—6523	8485—6691	to to
7506—4780	7804—5668	7928—5991	to to	to to	8880—7100-117
7507—4781	7805—5709	7936—6212	8256—6532	8500—6709	8886—7101
7510—4782	7806—5710	to to	8257—6521	8502—6715	to to
7514—4775a	7809—5706	7951—6227	8258—6522	to to	8894—7109
7518—4776	7810—5707	7957—6082	8279—6496	8507—6720	8901—7110
to to	7811—5708	to to	to to	8507a—7298	8902—7111
7521—4779	7812—5662	8009—6125	8286—6502a	8507b—6622	8904—7116
7522—4816	7813—5689	8010—6178	8288—6486	8507c—6639	to to
7525—4817	7814—5670	to to	to to	8513—6730	8910—7122
7525c—4746-7	7814a—5683	8047—6201	8294—6595	to to	8916—7202
7525d—4748-9	to to	8055—6243	8295—6504	8522—6738a	to to
7526—4859	7814f—5688	8056—6240	to to	8524—6761	8923—7202-7
7526a—4861	7814g—5679	8057—6244	8299—6508	to to	8928—7264
7527—6534	to to	8058—6245	8300—6386	8530—6767	8928a—7265
7527a—6535	7814k—5682	8060—3635	8301—6459	8535m—6795	8942—7266
7527b—6536	7816—5711	8060a—3636	to to	8536—6832	8943—7267
7531—5277	to to	8061—6246	8302m—6482	8539—6833	8948—7268
to to	7816g—5718	to to	8326—6444	8540—6834	to to
7547—5292	7818i—5853	8069—6255	8328—6446	8566—6863	8951c—7274
7548—5327	to to	8079—6260	8330—6537	to to	8966—7283
7549—5328	7819i—5874	to to	to to	8575—6872	to to
7550—5329	7822—6003	8083—6264	8336—6543	8591—6883	8971—7288
7550a—5296	to to	8100—6273	8339a—6350	to to	8977—7289
to to	7835—6015	8109—6274	to to	8595—6891	
7550h—5304	7836—6037	8115—6298	8339e—6354	8596—6896	

**CROSS REFERENCES REM. & BAL. CODE TO PIERCE'S CODE**

R&B—PC	R&B—PC	R&B—PC	R&B—PC	R&B—PC	R&B—PC
1—8666	94-1—8151	237—8449a	401—8227	501—7492	710—8422
2—8669	to to	238—8450	402—8229	502—7493	711—8425
3—8664	94-8—8158	239—7648	403—8230	504—7490	to to
4—8658	97—8145	240—8463	404—8078	505—7496	717—8431
5—8667	100—8145	241—8451	405—8077	506—1612	718—8052
6—8670	106—8159	242—8481	406—8079	507—7497	to to
7—8674	107—8147	243—8452	407—8080	508—9210	739—8073
8—8654	108—8149	253—8462	408—8122	509—9209	740—8413
9—8655	110—8148	254—7794	409—8123	510—7827	741—8414
10—8655	111—8150	255—8342	410—8124	511—7830	742—8415
11—8656	112—6579	to to	411—8109	512—7829	743—8419
12—8658	113—1780	272—8360	412—8110	513—7831	744—8420
13—8659	114—1783	273—8352	413—8103	514—7828	745—8416
14—8668	115—1785	274—8361	to to	515—7832	746—8417
15—8628	116—1786	275—8362	419—8108	to to	747—8418
16—8628	127—177	276—8364	420—7339	518—7835	748—7350
17—8629	128—172	277—8363	to to	519—7841	to to
18—8630	129—178a	278—8365	430—7349	520—7838	754—7356
26—8631	130—179	279—8366	431—8081	521—7839	755—7360
27—8645	to to	280—8367	to to	522—7921	756—7357
to to	142—191	281—8383	435—8084	to to	757—7358
30—8648	143—8252	282—8384	436—8090	527—7926	758—7359
32—8632	144—7434	283—8385	437—8091	528—7860	759—7361
35—1807	145—7437	284—8368	438—8092	525—7849	to to
36—8635	146—7440	to to	439—8093	530—7861	766—7368
38—8638	147—7330	289—8373	440—8093a	to to	767—7370
39—8634	148—7440	290—8375	441—8093b	561—7892	768—7371
40—8633	149—7440	to to	442—8085	562—7850	769—7373
41—8643	150—7435	293—8378	443—8086	to to	to to
42—8644	115—1355	294—8267	444—8087	565—7853	774—7378
42-1—8595	152—1356	295—8379	445—8111	566—7856	775—7369
to to	152-5—1364	296—8380	446—8116	567—7857	776—7372
42-13—8607	152-6—1366	297—8381	447—8120	568—7854	777—7431
43—9563	153—8253	298—8382	448—8088	569—7855	778—8215
44—9564	154—8254	299—8332	449—8089	570—7848	779—8216
45—9565	155—8160	to to	450—8112	571—7858	779—8217
46—9433	156—8161	308—8341	to to	572—7859	780—8218
47—9458	157—8162	309—8473	453—8115	573—7843	780—8219
48—9561	158—7542	315—8479	454—8117	to to	781—8220
49—9562	159—8166	316—8488	455—8119	577—7847	to to
50—8560	160—8168	317—8488a	456—8118	578—7892	784—8223
51—8561	161—8169	318—8484	457—3160	579—7836	785—7517
52—8564	162—8167	319—8480	458—8121	580—7837	786—7536
to to	163—8170	320—8482	459—8163	581—7894	to to
60—8572	to to	321—8483	460—8164	582—7905	791—7541
61—2699	178—8185	322—8485	461—8165	583—7906	792—7518
61-1—2705	179—8255	323—8489	462—8125	584—7907	to to
62—2703	to to	327—8493	463—8126	585—7895	808—7534
63—2702	182—8258	328—8150	464—8130	to to	809—7534
63-1—2704	184—8264	329—8494	to to	590—7900	810—7968
64—2700	185—8265	to to	468—8134	591—7908	to to
65—2701	186—8266	357—8521	469—8137	592—7901	837—7995
66—8573	187—8268	358—8524	470—8138	593—7902	838—8285
68—8574	to to	359—8522	471—8139	594—7909	to to
69—8575	198—8279	360—8522	472—8135	to to	858—8305
70—1653	199—8282	361—8522	473—8136	604—7919	859—8305a
71—1654	200—8283	362—8526	474—7456	605—8094	860—8306
72—1655	201—8284	to to	475—192	to to	to to
73—8583	202—8280	366—8530	476—7457	612—8101	885—8331
73—8584	203—8281	367—8486	to to	613—7927	886—6260
75—8580	204—8541	368—8487	482—7463	to to	to to
76—8582	to to	369—8532	492—7473	646—7960	890—6264
77—8585	207—8544	to to	to to	647—7379	891—7661
78—8586	208—8544	377—8540	495—7476	to to	to to
81—8587	to to	378—8127	496—8093c	679—7411	900—7670
82—8531	219—8554	379—8128	497—7477	680—7999	901—7609
83—8590	220—8432	380—8129	497—7478	680-1—8026	to to
85—8591	to to	381—7809	497—7479	680-2—8027	905—7613
to to	225—8437	397—7825	497—7484	681—8000	906—5258
88—8594	228-1—8441a	397—7826	498—7499	to to	to to
89—8140	229—8442	398—8224	498—7499a	706—8025	920—5272
to to	to to	399—8225	499—7500	707—8421	921—7646
93—8144	236—8449	400—8226	500—7490	to to	922—7647



# 2842 CROSS REFERENCES REM. & BAL. CODE TO PIERCE'S CODE

923-7694	to to	1233-7732	to to	1966-9613	2136-9215
924-7649	1111-9758	1234-7733	1770-9638	1968-9131-121	2137-9302
to to	1112-9749	1235-7734	1771-9417	1969-9131-122	2138-9305
927-7652	1113-8210	1236-7741	1772-9418	1970-6761	2146-9373
928-7695	1114-8211	1237-7742	1773-9419	to to	2147-9216
929-7653	1115-9750	1238-7743	1774-9649	1986-6767	2148-9214
to to	1116-8201	1239-7728	1775-9650	1987-1-593	2149-9219
932-7656	to to	1240-7735	1776-9410	to to	2150-9220
933-7655	1119-8204	to to	1777-9639	2005-9340	2152-9218
934-7614	1120-8213	1243-7738	1778-9584	2006-9198	2153-9131-6
935-7615	1121-8205	1244-7729	to to	2007-9132	2154-9131-58
936-7616	1123-8212	1245-7730	1789-9595	2008-9133	2156-9275
937-8555	1125-8206	1246-7731	1790-9410	2009-9134	2158-9374
941-8559	1126-8207	1247-7770	to to	2010-9393	to to
942-7535	1127-8208	1248-7740	1795-9415	2011-9276	2170-9386
943-8231	1128-8209	1249-7766	1796-9614	2011-1-9199	2171-9388
to to	1129-9705	1250-7766	to to	2011-2-9202	2172-9389
946-8-8242	1130-9707	1251-7767	1806-9624	2011-3-9201	2173-9293
947-7412	1131-9708	1252-7768	1823-9530	2012-9394	to to
948-7413	1132-9709	1253-7769	to to	2013-9391	2176-9396
949-7414	1133-9706	1254-7773	1846-9553	2014-9392	2181-9341
950-8393	1134-9710	1255-7997	1847-9427	2015-9395	to to
to to	to to	1256-7998	1848-9556	2016-9396	2186-9346
954-8397	1147-9723	1257-7776	1849-9640	2017-9135	2187-9390
955-8074	1148-9723a	1258-7778	to to	2018-9397	2188-9303
956-8075	1149-9737	1259-7779	1856-9647	to to	2189-9305
957-8076	to to	1260-7774	1857-9554	2021-9400	2190-9306
958-8243	1153-9741	1260½-8374	1858-9555	2022-9266	2194-6750
to to	1154-9661	1261-1652	1859-9557	2023-9148	2195-6751
966-8151	to to	1262-1771	1860-9428	2024-9258	2196-9307
967-7961	1157-9664	1263-1772	1861-9596	2025-9232	to to
973-7967	1158-9664a	1264-7753	1862-9429	to to	2210-9321
974-8465	1159-9724	to to	1863-9566	2049-9256	2211-9329
981-8472	to to	1269-7758	1864-9430	2050-9258	2212-9322
982-7501	1161-1-9728	1270-7780	1865-9431	2051-9259	to to
to to	1162-9679	to to	1866-9432	2052-9261	2219-9328
988-7507	to to	1277-7787	1867-9506	2053-9262	2222-9330
989-7008	1182-9699	1696-9813	1890-9529	2054-9267	2223-9333
990-7009	1183-9703	to to	1891-9420	to to	2224-9331
991-7514	1184-9700	1699-9816	to to	2061-9274	2225-9203
992-7515	1185-9701	1700-585	1897-9426	2062-9278	to to
993-7516	1186-9702	to to	1898-9494	to to	2229-9207
994-7510	1187-9704	1707-592	to to	2076-9292	2230-9212
to to	1188-9666	1708-9870	1909-9505	2077-9174	2231-9347
997-7513	1189-9667	to to	1910-9401	2079-9177	2232-9348
998-8214	1190-9668	1715-9877	to to	2080-9175	2233-9349
999-7415	1190a-9665	1715-1-9776	1918-9409	2081-7793	2234-9351
to to	1191-9655	to to	1919-9444	2082-9176	2235-9350
1012-7428	to to	1715-10-9784	1920-9445	2083-9178	2236-9202
1013-8186	1196-9660	1716-7290	1921-9446	to to	2237-9357
1014-8187	1197-9651	to to	1922-9575	2089-9184	to to
1015-8189	1198-9654	1722-7296	1923-9576	2090-9186	2240-9360
to to	1199-9652	1723-7299	1924-9577	2091-9187	2241-9225
1026-8200	1200-9653	to to	1925-9434	2092-9188	to to
1027-8386	1201-9675	1729-7305	to to	2093-9151	2246-9230
1028-8387	1202-9676	1730-7315	1929-9438	2094-9172	2247-9352
1029-8388	1203-2811	1730-1-7307	1930-9440	2095-9170	to to
1030-8390	1204-9734	1730-2-7308	1931-9439	2096-9171	2251-9356
to to	1205-9735	1730-3-7310	1932-9441	2097-9172	2253-8688
1033-8393	1206-9736	to to	1933-9442	2098-9152	to to
1034-8398	1208-9665a	1730-8-7314	1934-9443	2099-9153	2258-8693
to to	1209-9665b	1730-9-7297	1935-9448	2100-9254	2260-8695
1018-8412	1210-7721	1731-7316	1936-9567	2101-9265	to to
1049-7442	1214-7725	to to	to to	2102-9155	2282-8717
to to	1215-7798	1745-7330	1943-9574	to to	2284-8719
1062-7455	1216-7799	1746-4393	1944-9578	2112-9165	to to
1063-8028	1217-7800	1747-7331	to to	2114-9167	2304-8739
1064-8050	1218-7801	to to	1948-9582	2115-9168	2305-9136
1065-8029	1219-7802	1754-7338	1949-9597	2116-9169	to to
1066-8031	1220-7803	1755-9625	to to	2118-9149	2308-9139
1067-8031	1221-7804	1756-9559	1952-9600	2126-9189	2309-9140
to to	to to	1757-9560	1953-9609	2127-9190	to to
1085-8049	1224-7808	1758-9626	1954-9601	2128-9191	to to
1086-2854	1225-7759	1759-9627	1955-9602	2129-9131-59	2316-9147
1100-2868	to to	1760-9632	1956-9185	2130-9131-60	2317-9128
1101-1814	1230-7764	1761-9628	1957-9603	2134-9213	2318-9129
1102-2869	1230-1-7765	to to	to to	2135-9361	2319-9130
1103-2870	1231-7726	1764-9631	1962-9608		
1104-0751	1232-7727	1987-18-610	2151-9217		
		1765-9633	1963-9610		

2320—9047	2481—9024	to to	3042-1—129	to to	3693—4520
to to	to to	2649—8906	3042-2—130	3265—145	to to
2338—9065	2488—9031	2650—8970	3043—123	3265—146	3698—4525
2339—8814	2489—8776	to to	3044—133	3266—1957	3699—4541
to to	to to	2664—8984	3045—85	to to	3700—4526
2346—8821	2493—8780	2664-1—8985	to to	3283—1974	3701—4527
2347—9085	2494—9122	2664-2—8985	3054—94	3284—9131-15	3702—4528
to to	to to	2664-3—8986	3055—111	to to	3703—4513
2350—9088	2499—9127	2664-4—8987	3056—112	3287—9131-18	3704—4529
2351—9032	2500—9012	2665—8988	3056-1—113	3288—9131-62	to to
to to	to to	2666—8989	3057—99	3289—9131-61	3708—4533
2363—9044	2506—9018	2667—8990	to to	3345-1—355	3708½—4534
2364—9068	2507—8848	2668—8797	3068—110	to to	3709—4641
2365—9069	to to	2669—8798	3082-1—2707	3345-52—406	to to
2366—9070	2516—8857	2670—8800	to to	3369-1—7141	3715—4647
2367—8782	2517—8835	2671—8834	3082-34—2740	to to	3715a—4652
2368—9071	2517-1—8837	2672—9066	3139-1—19	3369-61—7201	to to
2369—8991	2518—8836	2673—9067	to to	3385-1—428	3715e—4656
2370—8763	2519—8840	2674—8907	3139-58—76	to to	3716—4648
2371—8764	to to	2675—8847	3140—3637	3385-56—482	to to
2372—8786	2525—8846	2676—8908	to to	3392—4072	3719—4651
2373—8938	2526—9089	to to	3152—3649	to to	3720—4657
2374—8923	to to	2685—8917	3153—9131-33	3586—4267	to to
2375—8924	2530—9093	2686—8781	3154—9131-34	3587—7283	3730—4667
2376—8925	2532—9094	2687—8918	3155—9131-32	to to	3731—4613
2377—8822	to to	2688—9131	3156—3703	3592—7288	3732—4614
2378—8939	2545—9106	2688-1—8888	3157—3704	3575—7275	3733—4615
2379—8940	2546—9075	2689—8801	3159—3705	to to	3734—4686
2380—9072	2547—9076	2690—8919	3160—3706	3600—7282	3735—4687
2381—9073	2548—9078	2693—8802	3161—9729	3601-1—4565	3736—4688
2382—8783	to to	to to	3162—9730	to to	3737—4616
2383—8784	2554—9084	2696—8805	to to	3601-27—4591	to to
2384—8785	2555—9074	2696-1—9648	3165—9733	3639—576	3751-1—4631
2385—9117	2556—9045	2696-2—8922	3165-1—2042	3639-1—579a	3751-2—4632
to to	2557—9046	2697—636a	to to	3640—577	3751-3—4633
2389—9121	2558—8858	to to	3165-5—2046	3640½—572	3751-4—4634
2390—8995	2559—8838	2701—636e	3165-5½—2048	3641—573	3752—4698
to to	2560—8839	2702—9131-11	3165-6—2049	3642—574	to to
2406—9011	2561—9077	2703—9131-110	3165-7—2050	3643—565	3764—4710
2407—8992	2562—8745	2704—9131-108	3172-1—1948	to to	3765—4689
2408—8993	to to	2705—9131-115	to to	3649—570	3766—4690
2409—8994	2568—8751	2706—9131-116	3172-5—1952	3650—579	3766a—4691
2410—8941	2569—8811	2707—9131-117	3173—2016	3651—571	3766-1—4593
2411—8942	2570—8812	2708—9131-109	to to	3652—578	to to
2412—8943	2571—8813	2709—9771	3180—2023	3653—891	3766-20—4612
2413—8758	2572—8752	2709—9772	3181—1953	to to	3767—1500
to to	to to	2710—9131-123	3182—2072	3658—896	to to
2417—8762	2577—8757	2711—3821	to to	3659—9759	3770—1503
2418—9116	2578—8771	to to	3185—2075	3660—9747	3771—1505
2419—8806	to to	2714—3824	3187—1975	3661—9760	3772—1508
to to	2582—8775	2715—9131-36	to to	3667—9766	3773—1509
2423—8810	2583—8859	2716—2697	3195—1983	3668—9748	3774—1512
2424—8953	to to	2717—2698	3196—2077	3669—9773	3775—1514
to to	2590—8866	2718—9131-8	3197—2050a	3670—9769	3776—1515
2432—8961	2591—8787	2719—9131-94	3198—2050b	3671—9768	3777—1516
2432-1—8964	to to	2719—9131-95	3199—2050c	3673a—1452	3778—1519
2433—8962	2600—8796	2720—5992	3201-1—2032	3674a—1453	3779—1520
2434—8963	2601—8944	2721—9131-47	to to	3675a—1454	3780—1521
2435—9107	2601-1—240	2721½—8799	3201-4—2035	3675-1—1455	3780-1—1503a
to to	2601-2—887	3000-1—5	3203—2036	3675-2—1456	3781—1524
2442—9114	2602—8945	to to	to to	3676—1457	to to
2445—8831	to to	3000-13—17	3208—2041	3676a—1458	3784—1527
2446—8832	2609—8952	3000-15—78	3209—2028	to to	3784½—1528
2447—8833	2610—8823	to to	3210—2029	3676d—1461	3785—1530
2448—8740	to to	3000-19—82	3211—2024	3677—4504	3786—1533
to to	2614—8827	3001—6298	3211-1—2024a	3678—4537	3787—1537
2452—8744	2615—8867	to to	3212—2025	3679—4505	to to
2453—8765	to to	3011—6306	3213—2026	3680—4509	3790—1540
to to	2622—8874	3030—83	3214—2027	3681—4508	3790-1—1543
2458—8770	2622-1—8886	3031—84	3215—2030	3682—4514	3791—1547
2459—9019	2623—8875	3032—114	3216—2031	3683—4515	to to
to to	to to	to to	3219—2051	3684—4510	3794—1550
2463—9023	2629—8881	3035—117	to to	3685—4540	3795—1553
2464—8965	2629-1—6962a	3037—134	3239—2071	3686—4516	to to
to to	2629-2—6962b	3038—124	3242—1987	to to	3803—1561
2468—8969	2630—8882	3039—125	to to	3689—4519	3804—1488
2469—8926	to to	3040—126	3256—2001	3690—4512	to to
to to	2633—8885	3041—127	3257—9131-35	3691—4506	3811—1495
2480—8937	2634—8891	3042—128	3258—138	3692—4507	3812—1478



# 2844 CROSS REFERENCES REM. & BAL. CODE TO PIERCE'S CODE

to to	3928—1843	4034—1573	4226-37—1945-924401—4879	4761—2347
3831—1477	3929—1633	to to	4226-38—1945-94 to to	4762—2324
3831-1—1496	to to	4061—1600	to to	4406—4884
to to	3933—1637	4062—1767	4226-41—1945-974407—4889	to to
3831-4—1499	3934—1637	4063—1768	4251—1945-34 to to	4776—2340
3831-5—3765-152	3935—1638	4064—1602	to to	4777—4500
3832—1847	3936—7481	to to	4255—1945-38 4414—4896	to to
to to	3937—1817	4067—1605	4267-1—1947-54 to to	4780—4503
3839—1854	3938—1818	4068—1608	to to	4781—2083
3840—1854a	3939—1822	4069—1606	4267-6—1947-59 4425—4908	4782—2084
3841—1710	3940—1821	4070—1607	4268—1947-78 4426 1—5008	4783—2088
to to	3941—1823	4071—1608a	to to	4426-2—5009 4784—2086
3847—1717	3942—1824	4072—7487	4275—1947-85 4426-3—5010	4785—2201
3848—1720	3943—1831	4073—1566a	4276—1947-87 4427—4913	to to
to to	3944—1834	4074—1609	to to	4792—2208
3857—1729	3945—1825	4075—1610	4277—1947-45 4469—4955	4793—2156
3858—1281	3946—1827	4076—1611	to to	4794—2158
3859—1282	3947—1841	4077—1613	4285—1947-53 to to	to to
3860—1566	3948—1826	4078—1614	4286—1946-63 4509—5007	4803—2167
3861—1616	3949—5471	4079—1615	to to	4805—2223
3862—1667	3950—5472	4080—7488	4301—1946-78 to to	4806—2225
3863—2706	3951—1828	4081—1567	4302—4720 4539—5040	4808—2227
3864—9211	3952—1830	4082—1617	4303—4721 4539-1—4909	4812—2231
3865—1677	3953—1833	4083—1618	4305—4722 to to	4821—2239
3867—1656	3954—1829	4084—7483	to to	4823—2240
3868—1686	3955—1832	4085—9209	4315—4732 4540—5041	4824—2241
3869—1687	3956—1819	4086—7494	4316—4755a 4541—5042	4825—2242
3869—1688	3957—1820	4087—9131-86	4317—4756 4542—5043	4827—2244
3870—1689	3959—1781	4088—9131-87	4318—4757 4543—5044	to to
to to	3960—1787	4089—7495	4319—4758 to to	4840—2257
3873—1692	to to	4090—7498	4320—4780 4552—5053	4841—2259
3874—1692a	3964—1791	4091—1946-1	4321—4759 4553—5053a	4844—2261
3875—1657	3965—1793	to to	to to	to to
3876—1658	3966—1794	4095—1946-5	4324—4762 to to	4887—2304
3877—1684	3967—1795	4095-1—1946-57	4325—4781 4575—5079	4888—2098
3878—1659	3968—2155	4096—1946-6	4326—4763 4576—5081	4889—2167a
3879—1680	3969—1792	4097—1946-7	4327—4764 to to	4890—2099
3880—1661	3970—1782	4097-2—1946-8	4328—4765 4596—5100	to to
3881—1681	3971—1619	to to	4329—4782 4597—5100a	4898—2107
3882—1666	3972—6937	4097-10—1946-16	4330—4783 4598—5101	4898-1—2087
3883—1660	3973—6938	4098—1946-7	to to	to to
3884-1—1682	3974—1763	4099—1946-18	4338—4789 4629—5132	4898-7—2093
3888—1685	3975—1769	to to	4339—4791 4629½—5132a	4899—2108
3889—1662	3976—1770	4121—1946-40	to to	to to
3890—1664	3977—1765	4122—1946-42	4343—4795 4643—5146	4910—2119
3890½—6722	3978—1766	to to	4343-1—4813 4644—5148	4910-1—2352
3891—1675	3979—1776	4126—1946-46	to to	to to
3892—1678	3979a—1764	4126-1—1946-41	4344—4796 4651—5155	4910-18—2369
3893—2359	3980—1771	4127—1946-47	4345—4797 4651-1—4733	4911—2209
3894—1671	to to	to to	4346—4798 4652—5156	4912—2211
3895—1674	3984—1775	4136—1946-56	to to	to to
3896—5983	3985—1796	4136-1—1946-58	to to	4922—2221
3897—5984	3986—1802	4136-5—1946-62	4358—4812 4701—5205	4923—2120a
3898—1704	to to	4137—1947-1	4359—4819 4702—5205a	4924—2168
3899—1705	3989—1805	to to	to to	to to
3900—1706	3990—1797	4151—1947-15	4370—4830 4703—5206	4931—2175
3901—1707	3992—1808	4153—1945-39	4372—4832 4704—5207	4932—2177
3902—1663	to to	4154—1945-40	to to	4933—2177
3903—1668	3997—1813	4155—1947-16	4379—4839 4705—5209	4934—2180
3904—1676	3998—1798	to to	4380—4841 4706—5211	4935—2181
3905—1665	3999—1799	4179—1947-40	to to	4936—2182
3906—1708	4000—1800	4180—1945-98	4386—4847 4730—5235	4937—2185
3907—1709	4001—7842	4181—1945-99	4386-1—6768 4741—5256	to to
3908—1784	4002—1806	4181-1—1945-41	to to	4940—2188
3909—1679	4003—1801	to to	4386-13—6780 4742—3196	4940—2305
3912—1844	4004—1467	4181-4—1945-44	3287—4848 4743—3196-1	4940-2—2306
3914—1846	4006—1816	4182—1945-1	4387-1—4849 4744—5273	4940-3—2307
3914—1864	4005—1816	to to	4388—4850 to	4940-11—2315
3915—1621	4007—1733	4214—1945-33	to to	to to
to to	to to	4215—1947-67	4395—4857 to to	4940-14—2318
3918—1624	4015—1741	to to	4395½—4858 4751—4888	4941—2121
3919—1842	4016—7482	4225—1947-77	4396—4859 4752—2078	to to
3920—1626	4017—1742	4226-1—1945-57	4397—4862 4753—2079	4953—2133
3921—1627	to to	4226-2—1945-58	4398—4861 4754—2081	4954—2135
3922—6604	4030—1755	to to	4399—4863 4755—2080	4955—2136
3923—1628	4031—1570	4226-21—1945-77	4399-2—4865 4756—2082	4956—2138
to to	4032—1571	4226-22—1945-77a	to to	4957—2139
3927—1632	4033—1572	4226-23—1945-78	4399-15—4878 4757—2323	4958—9131-20
3927-1—1625	4033-1—1601	to to	4400—4864 to to	4959—9131-22
				4960—9131-27

4961—9131-21	5049-6—4768	5299—7751	5395-54—2533-6	5541—5296	5646—6042
4962—9131-23	to to	5300—7751a	5395-55—2533-7	to to	5647—6043
4963—9131-25	5049-13—4775	5301—3636e	5396—6322	5549—5304	5648—6020
4964—2190	5053—6640	5302—3636f	to to	5550—5374	5649—6021
4965—9131-19	to to	5303—3636g	5401—6327	to to	5650—6045
4966—9131-26	5056—6643	5304—3636h	5404—5277	5554—5378	5651—6046
4967—9131-28	5057—6715	5305—7752	5405—5287	5554-1—5379	5652—6048
4968—9131-24	to to	5306—4268	5406—5278	to to	5653—6049
4969—2198	5062—6720	5307—3766	5407—5279	5554-12—5390	5654—6050
4970—2199	5063—6537	to to	5408—5293	5554-13—5392	5655—6035
4971—2000	5064—6538	5311—3770	5409—5288	5554-14—5393	5657—6016
4971-1—2750	5065—6723	5312—193	5410—5294	5554-15—5394	5658—6017
to to	to to	5313—194	5410-1—5305	5558—6060	5659—6029
4971-7—2756	5071—6729	5314—195	5411—5295	5559—6060a	to to
4971-9—2758	5071-1—6671	5315—9131-49	5412—5289	5560—6060b	5664—6034
to to	to to	5316—9131-51	to to	5561-1—6060g	5665—6036
4971-32—2781	5071-6—6676	5317—9131-48	5415—5292	5561-2—6060h	5666—6061
4972—4635	5071-7—6676a	5318—2641-1	5416—5281	5561-3—6060i	to to
4973—4637	5072—1835	to to	to to	5561-4—6060d	5670—6065
4974—7617	to to	5324—2641-6	5419—5284	5561-5—6060e	5671—6065a
4975—7618	5077—1840	5330—2641-40	5420—5280	5561-6—6060f	5674—525
4976—7619	5078—976	5331—2641-41	5421—5285	5562-1—196	to to
4976-1—3448	to to	5332—2641-42	5422—5286	to to	5678—529
to to	5084—982	5334—2641-8	5423—5306	5562-24—219	5679—534
4976-6—3453	5085—5405	5335—2641-39	to to	5562-25—221	5680—530
4977—2370	to to	5336—2641-43	5431—5314	to to	to to
to to	5101—5421	to to	5432—5314a	5562-36—231	4683—533
		5341—2641-47	5433—5315	5562-37—235	5684—535
4989—2382	5101-1—5422	5341-1—2641-48	to to	to to	5685—536
4990—2385	to to	5341-2—2642-51	5444—5325	5562-41—239	5686—537
4991—2383	5101-7—5428	5341-3—2641-52	5446—1855	5575—5975	5686-1—538
4992—2384	5102—5465	5342—9131-98	5446a—1856	5576—5963	to to
4993—2386	to to	5343—9131-99	5446b—1866	5577—5973	5686-7—544
4994—2387	5107—5470	5344—9131-100	5446c—1860	5578—5967	5686-7½—543a
4995—5989	5108a—5481	5345—2641-22	5446d—1857	5579—5974	5636-8—545
4996—5990	5109a—5482	5346—2641-23	5446e—1858	5580—5976	to to
4997—5991	5110a—5483	5347—2641-24	5446f—1859	5582—122	5686-23—560
4998—2388	5111a—5484	to to	5446g—1867	5583—5968	5687—6212
to to	5112—5457	5351—2641-28	5447—1868	to to	to to
5013—2403	5113—5460	5352—2641-29	5447b—1870	5587—5972	5702—6227
5013-1—2409	to to	5353—2941-30	to to	5590-1—6051	5703—6188
5015—6706	5117—5464	5355—2641-38	5447f—1874	to to	to to
to to	5118—5429	5356½—2641-12	5448—1875	5590-4—6054	5716—6201
5018—6709	to to	5357—2641-33	5448a—1876	5590-6—6056	5717—7631
5019—6316	5728—5439	5358—2641-32	5448c—1878	5590-7—6055	to to
to to	5729—956	5358½—2641-34	5448d—1879	5590-8—6053	5726—7640
5024—6321	to to	5359—2641-11	5448h—1863	5590-9—6059	5727—7642
5024-1—5473	5140—967	5360—2641-13	5448i—1880	5590-10—6059a	5728—7643
5024-2—5474	5140-1—820	5363½—2641-10	5448j—1865	5603—5980	5729—7644
5024-3—5475	5140-2—821	5364-1—2641-17	5448-1—1902	5604—5981	5730—6082
5025—6571	5140-3—822	5364-2—2641-18	to to	5605—5982	5743—6095
to to	5140-4—824	5365-1—2641-15	5448-7—1908	5607—6018	5755—6100
5028—6574	5141—9131-41	5366—2641-19	5449—9131-88	5608—6019	to to
5029—6712	5142—9131-43	5368—2641-36	5450—9131-89	5609—6027	5765—6110
5030—6713	5143—9131-44	5369—2641-21	5451—2549	5610—6028	5768—6111
5031—6714	5144—9131-111	5370—2641-9	5452—2550	5611—6026	to to
5032—6699	5145—9131-40	5373—2641-7	5453—2535	5612—6023	5782—6125
5032a—5945	5146—9131-38	5374—2641-54	to to	5613—6024	5783—858
5032b—5946	5147—9131-39	to to	5466—2545	5614—6025	to to
5032c—6692	5148—9131-42	5377—2641-57	5466-1—2551	5615—5960	5807—882
5032d—6694	5149—9131-37	5378—2641-29	to to	5616—5961	5808—6126
5033—6710	5150-1—2410	5381—2641-58	5466-5—2555	5617—5962	to to
5034—6711	to to	5387—2641-62	5467—1884	5619—5985	5834—6152
5035—6618	5150-120—2529	to to	5481—1898	to to	5835—1150
5036—6619	5241—6503	5391—2641-65	5481-1—1899	5622—5988	to to
5037—6621	5242—6503-1	5391-1—2641-16	5481-2—1900	5623-1—5993	5956—1171
5038—6620	5243—6503-2	5392—2641-66	5481-3—1901	to to	5856-1—6153
5039—6696	5276—2556	5393—2641-59	5482—241	5623-10—6002	to to
5040—6703	5277-1—2558	5393-1—2641-67	to to	5625—6003	5856-4—6156
5041—4766	to to	5394—2641-60	5491—250	5626—6003a	5857—6178
5042—4767	5277-21—2578	5395—2641-61	5492—5395	5627—6004	5857-1—7658
5043—4746	5288—7744	5395-1—2586	to to	to to	5857-2—7659
to to	to to	to to	5496—5399	5638—6015	5857-3—7660
5046—4749	5291—7747	5395-33—2618	5497—5336	5639—6037a	5858—6179
5047—4816	5292—1421	5395-34—2620	to to	5640—6044	to to
5048—4817	5293—582	5395-34b—2649	5534—5373	5641—6038	5866—6187
5049—4790	5294—583	5395-35—2621	5535—5330	to to	5867—6780
5049-1—4750	5295—584	to to	to to	5644—6041	5868—6781
to to	5296—7748	5395-53—2639	5540—5334	5645—6037	5869—6783
5049-5—4754	to to				



# 2846 CROSS REFERENCES REM. & BAL. CO DE TO PIERCE'S CODE

5869-1-6788	5949-2847	to to	6532-9484	to to	6744-6398
5869-2-6789	to to	6254-3159	6533-9473	6626-6443	6744-1-6399
5870-6784	5952-2850	6255-3161	6533-1-9462	6628-6669	6745-6400
5871-6785	5953-2827	6256-3162	6533-2-9464	6629-6667	6746-6406
5871-1-6782	5953-1-2851	6262-1-3163	6533-3-9465	6630-6668	to to
5872-6786	5953-2-2852	to to	6533-4-9466	6630-1-6670	6750-6410
5873-6787	5953-3-2853	6262-33-3195	6533-5-9463	6631-6429	6751-6456
5874-6790	5954-2828	6289-3196-2	6534-9471	to to	6752-6457
to to	5955-2830	6290-3196-3	6535-9485	6634-6432	6753-6458
5878-6794	5956-2829	6291-3196-4	6536-9472	6635-6392	6754-6411
5878-1-6816	5957-2831	6315-7266	6537-9467	6635-1-6483	6755-6412
5878-2-6817	5958-2832	6316-7710	to to	6635-2-6484	6756-6504
5878-2a-6818	5959-2834	to to	6540-9470	6635-3-6485	to to
5878-2b-6820	5960-2835	6324-7718	6541-9447	6635-4-6427	6760-6508
to to	5961-2836	6325-7701	6542-9486	6636-6539	6761-6413
5878-2g-6825	5962-2838	to to	to to	to to	6762-6414
5878-3-6826	5965-2845	6329-7705	6549-9493	6640-6543	6763-6419
to to	5966-2820	6330-3280	6550-3433	6641-6339	6764-6415
5878-8-6831	5967-2843	to to	6551-3441	6641-1-6340	6765-6386
5878-9-6177	5968-2844	6358-3307	6552-3434	6642-6341	6766-6416
5879-1-6157	5969-2837	6359-7706	to to	to to	6767-6417
to to	5970-2833	6360-7707	6558-3440	6647-6346	6768-6418
5879-10-6166	5971-2839	6361-7709	6559-3442	6648-6348	6769-6401
5879-11-6168	5972-2840	6362-3310	6560-3548	6649-6393	to to
to to	5973-2842	to to	to to	6650-6347	6773-6405
5879-16-6173	5974-9297	6368-3316	6564-3552	6651-6534	6774-6420
5879-17-6167	to to	6369-3322	6565-3445	6652-6535	6774-1-64??
5879-18-6175	5979-9302	to to	6566-3454	6653-6536	6775-6421
5879-19-6176	5980-1-2642	6391-3347	6566-3455	6654-6533	6776-6423
5897-6835	to to	6392-3372	6567a-3457	6655-6444	6777-6424
5897½-6795	5980-32-2673	to to	6568a-3458	6659-6445	6778-6430
5898-6800	6023-2014	6395-3375	6569-7289	6660-6446	6780-6521
5899-6812	6024-2015	6396-9131-56	6570-3443	6661-6349	6781-6522
5900-6836	6025-2746-4	6397-9131-57	6571-3444	to to	6781-1-4486
5901-6837	to to	6398-3348	6571-1-3526	6667-6355	to to
5901a-6838	6028-2746-7	to to	to to	6668-6388	6781-5-4490
to to	6028½-2801	6403-3353	6571-21-3547	6670-6362	6781-6-4492
5901m-6850	5029-2802	6404-147	6572-3459	6670-1-6363	6781-7-4480
5902-6852	6030-2782	to to	6573-3460	6670-2-6361	6782-6486
5903-6853	to to	6407-150	6574-3460a	6670-3-6359	to to
5905-6855	6033-2785	6408-3376	6575-3461	6671-6365	6788-6493
5906-6851	6034-2785a	to to	to to	to to	6790-6495
5907-6802	6035-2786	6415-3383	6579-3465	6677-6371	6791-6496
to to	to to	6415-1-5947	6580a-3456	6678-6383	to to
5914-6809	6049-2800	6416-3197	6581-3466	6678-1-6357	6797-6502
5914-1-2803	6051-2871	to to	6582-3467	6678-2-6358	6798-6502a
to to	to to	6432-3213	6583-3986	6679-6384	6799-6503-13
5914-8-2810	6056-2876	6432-1-3399	to to	6680-6372	6799-6503-14
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5918-1434	to to	to to	6598-3525	6684-6377	6802-6503-18
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5926-1422	to to	6494-3274	to to	6690-6387	6807-4-6503-12
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5944-2821	to to	to to	6616-6447	6728-6482	6831-1-7681
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6844—3317	7020—427	7183—3765-14	7483—653	to to	7892-35—1023
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6894—3600	7069-1—3636a	7337—3765-146	7510—1289	to to	to to
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to to	to to	7343—3765-151	7516c—1244	7835—1181	to to
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6906—2141	7084—5689	7345—7324	7517-1—2321	7837—1267	8011—1227
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6922—3583	to to	7349—3819	7519-2—706	to to	8016—1237
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6938—3599	7099—3689	7351—3771	7520—9474	7844—1182	8029—1239
6939—6622	to to	to to	to to	7845—1183	8030—1240
6940—6228	7105—3695	7371—3791	7528—9482	7846—1184	8031—1241
to to	7106—4692	7408—3809	7579—1140	7848—1186	8035—5440
6945—6233	to to	to to	to to	7849—1172	to to
6946—6680	7109—4695	7416—3817	7583—1144	to to	8043—5448
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8123-5944	to to	8544-7339	8727-3446	8920-6247	9040-8660
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8182a-1382	8443-7140	8616-5513	8775-135	8980-8589	9087-6880
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to to	8507-3417	8674-5682	to to	8998-6679	9117-6898
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8309-9131-68	8539-4411	8718-5662	8915-6248	9036-6577	9140-6920

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9161---7050a	9216---7030	9251---6969	9319---4719	9436-3---7100-124	9511-10---7261
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9183---7053	9223a---6958	9279---7013	9373-1---7100-120	9501---9131-3	9532---7262
9184---7054	9223-1---6959	9280---7031	9373-2---7100-121	9502---9131-4	9533---7263
9185---7055	9223-2---6960	to to	9374---7100-53	9503---9131-5	
9188---7056	9224---6966	9299---7050	to to	9503-1---2675	
9189---7058	9225---6967	9300---4711	9392---7100-71	to to	
to to	9226---6968	9301---7696	9392-1---7100-70	9503-17---2691	
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**DEFAULT**

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**DELINQUENCY**

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**DELINQUENT CHILDREN**

Act, all minors under 18 subject to, §593.  
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Actions, how commenced, §597.  
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 Associations, children may be awarded to, §601.  
 Child awarded to individual or association, §601.

Parent compelled to support, §600.  
 Children to be kept separate from adult convicts, §603.

Commitments, limitation of, §602.  
 Made to citizen or institution, §600.  
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Contempts, failure to produce child, §598.  
 Convictions not to be entered against child, §602.

County to pay expenses, when, §609.  
 Crimes, contributing to delinquency of child, §609.

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**DELINQUENT CHILDREN (Cont'd)**

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**DEAF AND BLIND, ETC. (Cont'd.)**

Superintendent, appointment, term, qualifications, §4853.

Salary, §6628.

System of public schools, part of, §4720.

Terms, September to June, §4850.

Tuition free, §4851.

**DEATH**

Absence raises presumption of, §9131-7.

Actions shall not abate, §8274.

Service to dependents, §8275.

Appeals shall not abate, §7328.

Attorney, procedure, §184.

Hospitals to keep record, §5320.

County treasurer, office to be delivered up, §1833.

Executor, letters shall issue, §9939.

Industrial insurance, amount, §3472.

Judgment, ground of vacation, §§8130, 8133.

Limitation of action raised by, §8177.

Public service commission to investigate, §5590.

Registration of, §§5281, 5306.

Report by physicians, etc., §5282.

Voters, certified to county auditor, §2334.

**DEATH BY WRONGFUL ACT**

Action for, §8259.

**DEATH PENALTY**

Murder, first degree, §8997.

**DEBTS.** See Public Indebtedness, §5400.

Another's, promise to pay to be writing, §7745.

Deceased, limitation on, §9865. See Probate Procedure.

**DECEIT**

Crimes against, §9107-15.

Foreign offenses punishable, §8689.

**DECISIONS**

Superior courts in 90 days, §8634.

Power of judges outside county, §8643.

Supreme court, duties of reporter—pay, §8677-82.

Trials, (see) all incidental questions by court, §8507.

**DECK COURTS**

Created—powers, §3765-67. See Militia.

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**DEDICATION**

Cemeteries, §571.

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**DEEDS**

Acknowledgements, who may take, §1915-22.

Form of, §§1928, 4511.

Corporation, form, §4511.

After acquired title inures to grantee, §1930.

Allens, power to take and give, §135.

Assignment for benefit of creditors, §2856.

Trust certificates, §1910.

Certifications as evidence, §§1650, 1652, 7774.

Commissioners created—oath—seal, etc., §1418.

Commissioners of court to make, §8095.

Community property, §1434.

Counties, grants to not to fail, §1471.

County property, how made, §§1716, 1722.

Courts enforce by contempt, §7442.

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Decedents contracts, §10005.

Defective, recorded imparts notice, §1923.

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Exemptions from execution, §7858.

Forgery a crime, §8859.

Fraudulent if to own use, creditors, §7744.

Forms of various, §1924.

Homestead, exempt, waiver, §7858.

Husband and wife to each other—powers attorney, §1443.

Husband or wife with record title, §1448.

Indians may make, §2747-8.

Notice, filing of deeds, etc., is, §1914.

Partition of realty by action, §8321.

Powers attorney, §1444.

Public officers, annulment by quo warranto, §8411-12.

Realty contracts, etc., to be by deed, §1909.

Recording and effect, §§1640, 1914.

Registered lands, §5783.

School districts, how made, §§5012, 4984.

Seals, private abolished—validation, §1912.

Sheriffs in execution sales, §7918-19.

Validation (1891), §7920.

Specific performance of decedent's contract, §10008.

State lands subject to easements, §7679.

Tax by county treasurer, §§6998, 1819.

Eminent domain by cities, §7586.

Limitation of actions against, §8167.

Telegraph, sent by, §7790.

Trust certificates, assignment, §1910.

Creditors may impeach, §7744.

Waiver of exemptions from execution, §7858.

Water rights, conveyance by, §7715.

Witnesses, absence cured (1890), §1929.

**DEER**

Season—hunting with dogs, §§2608, 2610, 2641-13.

**DEFAULT**

Divorce cases prohibited, §7504.

Ejectment, opened, when, §7532.

Executor, etc., not evidence of assets, §7363.

Failure to reply to affirmative answer, §8355.

Forcible entry and detainer cases, §7986.

Foreign judgment without personal service, defense, §7997.

Garnishment cases, §8011.

Judgment, failure to answer, §8109.

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Justices courts, judgment, §9555.

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Mandamus not allowed, §8191.

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Opening before final judgment—terms, §8110.

Plaintiff for failure to answer affirmative matter, §8365.

Appearance, nonsuit authorized, §8122.

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Registration of land titles, (see) effect, §5750.

Sureties not allowed, §8471.

Trial, dismissal or judgment, §8482.

**DEFECTIVE INSTRUMENT**

Recorded imparts notice, §1923.

**DEFECTIVE YOUTH**

Deaf and blind, (see) state school, §4848.

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Report by district clerks, etc., §5042.

**DEFECTS**

Appeal bond, amendment, §7297.

Appeal bond justices courts not fatal, §9408.

Bonds, not to defeat, §7431.

Deeds to counties to be valid, §1471.

Jury drawing, etc., not fatal, §8159.

Loggers liens immaterial, §9693.

Mortgage in probate not to defeat, §9977.

Negotiable instruments, effect, §4127.

Pleadings waived, except, §8350.

Road establishment immaterial, §6017.

**DEFENDANT**

Action, opposed to plaintiff, §8254.

Answer not required in damage cases, §8460.

Costs, entitled if plaintiff not, §7460-61.

Judgment against, part of, §8080.

Confession of, §8104.

Name not known, pleading, §8339.

Notice, entitled after appearance, §§8451, 8481.

Pleadings, only certain allowed, §8343.

Service of part, procedure, §8449.

After judgment rendered, §8090-93b.

Special proceedings, §7415.

**DEFENSES**

Answer shall set up facts, §§8351, 8358.

Crimes, see Crimes and Procedure.

Negotiable instruments, available when, §4129.

**DEFICIENCIES**

County officers prohibited, excess of 2% budget, §7027.

State institutions prohibited—penalty—liability, §6571.

Exception of certain institutions, §6574.

**DEFICIENCY JUDGMENT**

Mortgage foreclosure if agreed to, §7904.

**DEFINITIONS.** See Construction. Words and Phrases.

Bills of exchange, §4197-4202.

Bills of lading, §480.

Checks as negotiable instruments, §4256.

Criminal code 1909, of words, §8738.

Negotiable instruments act, various words, §4262.

Promissory note, §4255.

Public lands same as state lands, §6341.

Words and Phrases (see).

Jury in trials, §§8513, 8158. See Trials.

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Assessments in eminent domain by cities, §7580.

Taxation, (see).

**DELINQUENT CHILDREN**

Act, all minors under 18 subject to, §593.

Liberal construction required, §606.

Actions, how commenced, §597.

Age limit of commitment, §602.

Associations, children may be awarded to, §601.

Child awarded to individual or association, §601.

Parent compelled to support, §600.

Children to be kept separate from adult convicts, §603.

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Made to citizen or institution, §600.

Revocation of, §600.

Contempts, failure to produce child, §598.

Convictions not to be entered against child, §602.

County to pay expenses, when, §600.

Crimes, contributing to delinquency of child, §609.

Suspended, bond required, §609.

**DELINQUENT CHILDREN (Cont'd)**

Criminal charge, child may be tried on, §604.  
 Custodian to give bond, when, §609.  
 Custody of child may be revoked, §600.  
 Delinquency, contributing to, penalty, §609.  
 "Delinquent child" defined, §593.  
 Delinquent children wards of the state, §590.  
 Detention rooms to be provided, §605.  
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 Girls, state school for, §6768.  
 Hearings, notice of, how given, §598.  
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 Jail sentences not to be given, §603.  
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 Truants, juvenile courts to handle, §593.  
 Visitation board, appointment, §610.  
 Duties to visit institution for children, §610.  
 Expenses of, §610.

**DELIVERY**

Negotiable instruments, §§4086-7, 4262.

**DEMAND**

Negotiable instrument payable on, §4078.

**DEMURRAGE**

Public service commission to regulate, §5612.

**DEMURRER.** See also Pleadings.

Answer subject to, §8364.

Answer showing grounds, when, §8348.

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Contents—general or special, §8346-7

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Facts or jurisdiction wanting at any time, §8350.

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Trials, to evidence, §8505.

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Failure of, facts pleaded deemed true, §8381.

**DENTAL EXAMINERS**

Board created—duties, §1931.

**DENTISTRY**

Crimes, practicing without license, §9105.

License of practitioners—board, etc., §1931.

**DEODANDS**

Abolished, §8723.

**DEPARTMENT OF AGRICULTURE**

Created—powers, §5. See Agriculture.

**DEPARTMENTS**

Supreme court, (see) organization—powers, §8654.

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Bonds, capitol, are security for deposits, §6287.

Cities over 75,000, §976; under, §979.

County authorized—interest, §1835.

State, selection—bond—interest—statements, etc., §6723.

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False statements perjury, §6676.

**DEPOSITIONS**

Admissible, when, §7739.

Another action, §§7731, 7770.

Grand jury, §9608.

Trials, §7730.

Amendments by witness, §7729.

Appeal, inclusion in record, §7818.

Authorized—use of, §7726.

Certificate, form of, §7737.

Commission out of state, §7728.

Within or without state, §7735.

Commissioner's deeds may take, §1418.

Committing magistrates may take, §9608.

Contempt if witness fails to attend, §7743.

Contest, legislative office, §2142-53.

Court commissioners may take, §8591.

Crimes, perjury complete when, §9037.

Use in trials, §9137.

Judges may take, §8571-2.

Jury not to have, §8515.

Justices courts, §9503-5.

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Fish hatchery streams screened, §2486.

Irrigation defined, §3293.

**DIVIDENDS**

Bank restricted—surplus, §283.

Creditors in insolvency, §2861.

Private corporation only from profits, §4524.

**DIVORCE**

Advertising to procure unlawful, §9023.

Allimony, temporary and suit money, §7507.

Permanent, §7508.

Appeal, remarriage prohibited, §7514.

Trial de novo, §7512.

Children, disposal and care of, §7508.

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Breaking fences, unruly, liability, §2381.

Bulls, (see) castration, etc., §1953.

Registered only, on open range, §1954.

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 Tax foreclosures, duties, \$6994-5.  
 Commissioner, duties, \$6878.  
 Temporary appointed by court, §§1783, 1794.  
 Term of office, \$1566.  
 Truant cases, duties, \$5226.  
 Veterinary act, duties, \$7136.  
 Vital statistics, duties, \$5326.  
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 Substitution of parties, \$8237  
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 Costs, complainant liable, \$8237.  
 Evidence, reputation, \$8237.  
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Appeals, authorized, procedure, \$5211.

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